

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF TENNESSEE  
3 NASHVILLE DIVISION

**FILED**  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TENN.

MAR 02 1998

BY JAC  
DEPUTY CLERK

4 ABU-ALI ABDUR' RAHMAN,

5 Plaintiff,

6 vs.

7 RICKY BELL,

8 Defendant.

Civil Case # 3-96-0380

Beginning February 6, 1998

CLERK'S COPY

9  
10 TRANSCRIPT OF HEARING  
11 BEFORE THE HONORABLE TODD J. CAMPBELL

12  
13 APPEARANCES:

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17  
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20  
21  
22  
23  
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1 February 6, 1998.

2 THE COURT: You will now have an  
3 opportunity to present your case uninterrupted other than  
4 someone literally calls and files a TRO and wants to have  
5 it heard. They will get in line behind you.

6 So, Mr. MacLean, tell me how you want to  
7 proceed.

8 MR. MACLEAN: A couple housekeeping  
9 matters to discuss.

10 First of all, we discussed this with  
11 counsel for respondent but it is our understanding the  
12 state court record that has been filed with the Court,  
13 which was required by the rules, will be part of the  
14 record in this proceeding. I just wanted to clarify  
15 that.

16 THE COURT: Mr. Baker, any dispute about  
17 that?

18 MR. BAKER: No, Your Honor. We agree it  
19 has been filed and it is here for the Court to consider  
20 in resolving this matter.

21 THE COURT: All right. It will be  
22 considered and considered filed.

23 MR. MACLEAN: Thank you. The the second  
24 matter, Your Honor, concerning the numbering of exhibits.  
25 We have prepared and just finally got our copies put

1 together yesterday afternoon, a binder of exhibits that  
2 we premarked. We are not going to use it today.

3 THE COURT: All right.

4 MR. MACLEAN: The exhibits go from one to  
5 108, roughly. The exhibits I will start using today, I  
6 started them at 110.

7 THE COURT: The other have been premarked  
8 up to that point?

9 MR. MACLEAN: Yes.

10 THE COURT: Are you considering the state  
11 record an exhibit?

12 MR. MACLEAN: No. We haven't numbered  
13 it. But a lot of the exhibits are portions of the state  
14 record we pulled for purposes of this hearing.

15 Your Honor, the next matter is we would  
16 like to offer into evidence at this time the deposition  
17 of Detective Garafola. We discussed this with the  
18 state.

19 The state filed an objection to portions  
20 of Detective Garafola's deposition on hearsay grounds,  
21 but indicate it in their pleadings they would probably  
22 not object to the entire deposition.

23 I discussed this with Mr. Baker. He said  
24 for purposes of this day's hearing, he would not object  
25 to having it marked for identification and it may come

1     into evidence without objection later. We have got  
2     Detective Garafola under subpoena. He asked that he not  
3     be asked or required to attend because he has plans. We  
4     would like to accommodate him. We don't think his live  
5     testimony is necessary.

6                     I would like to present this to the Court  
7     at this time.

8                     THE COURT: Mr. Baker, are we agreeing  
9     this is admissible because the witness isn't available or  
10    are you just allowing him to mark it for identification?  
11    What is the position?

12                    MR. BAKER: I don't anticipate an  
13    objection to the admission of this deposition. Detective  
14    Garafola may still be a witness in the case. That is  
15    fine.

16                    We basically don't have an objection to  
17    the admission as long as it is the complete deposition.  
18    We anticipate we may rely solely on the deposition.

19                    THE COURT: Let me see if I understand.  
20    You are agreeing that the deposition in its entirety can  
21    be admitted but you are reserving your right to call him  
22    live if you so choose?

23                    MR. BAKER: Yes.

24                    THE COURT: Any problem with that?

25                    MR. MACLEAN: No, Your Honor.

1 THE COURT: All right. I will allow it  
2 admitted into evidence.

3 MR. MACLEAN: We have with his entire  
4 deposition except for a late-filed exhibit which was the  
5 entire police file. I don't have it here. It may come  
6 in later. It may not. I think it is perhaps part of the  
7 state court record.

8 I wanted it made clear we have all the  
9 exhibits to the deposition except the late-filed exhibit  
10 which was the entire police file.

11 THE COURT: All right. To recapitulate,  
12 what we have done so far is by agreement of the parties  
13 the state court record is admitted and by agreement of  
14 the parties the deposition of Detective Garafola -- have  
15 I said that right?

16 MR. MACLEAN: I believe so.

17 THE COURT: Is admitted and you will start  
18 your Exhibit Numbering today at a 110.

19 MR. MACLEAN: Right. His deposition is a  
20 110.

21 THE COURT: One other thing. Back on this  
22 motion that related to Mr. Barrett. He made the motion  
23 as to Mr. Boyd and Beard only. It slipped my mind, Mr.  
24 Glanton was something I thought was set.

25 What problem does that present or not

1 present?

2 MR. MACLEAN: We have discussed that out  
3 in the hallway and contacted Mr. Glanton and asked if he  
4 could come in tomorrow morning and start at nine o'clock  
5 with the other witnesses.

6 Of course, he said he would like to spend  
7 his Saturdays relaxing but said he would do that. That  
8 is where it stands. We were going to go forward with his  
9 deposition at one o'clock this afternoon but because of  
10 the scheduling of things today --

11 THE COURT: Has he agreed to do that  
12 tomorrow?

13 MR. MACLEAN: Yes. I think that is  
14 resolved.

15 THE COURT: All right. I apologize for  
16 that not occurring to me while Mr. Barrett was here. The  
17 context was quashing the subpoenas. That did not occur  
18 to me. I assume you all figured it out since no one  
19 mentioned it to me. That seems to resolve itself.

20 Okay.

21 MR. MACLEAN: Our first witness is Dr.  
22 Kris Sperry.

23 THE COURT: All right. Dr. Sperry, come  
24 around.

25 (Whereupon, the witness was duly sworn.)

1                   MR. MACLEAN: Your Honor, I have a set of  
2 exhibits that I am going to attempt to introduce through  
3 this witness. I have given the state one set. I would  
4 like to put one set up with the witness and give the  
5 Court one.

6                   THE COURT: How does it relate to the  
7 state's objection that admission of the petitioner's  
8 expert reports are hearsay and inadmissible under Rule  
9 802?

10                  MR. MACLEAN: These exhibits are not his  
11 report. His report is included but these exhibits are  
12 more than his report. They are the documents he relied  
13 upon and other documents I will ask questions about.  
14 Some of these are premarked and included within the  
15 exhibit notebook we will be presenting on Monday.

16                  THE COURT: Mr. Baker, is it agreed what  
17 is being handed to you and me is admissible both as in  
18 terms of authenticity and admissibility or are we going  
19 to take up each of these one by one, or do you not know  
20 yet?

21                   I am not trying to rush you. I am trying  
22 to see if you all reached an agreement that it is  
23 admissible. If not, we will proceed accordingly.

24                  MR. MACLEAN: I would like to at least  
25 hand the packet up.



1 MR. BAKER: We object to the admission  
2 of his report on the hearsay ground. It is other  
3 documents -- no objection and stipulated that they are  
4 admissible simply for the limited purpose of these  
5 documents he relied on for his opinion but not  
6 necessarily for the truth of the matters asserted  
7 therein.

8 MR. MACLEAN: All right.

9 THE COURT: All right. Let me see if I  
10 understand the respondent's position. Other than Dr.  
11 Sperry's report the respondent agrees that the documents  
12 are admissible on the issue that these are matters he is  
13 relying on for purposes of his opinion?

14 MR. BAKER: Yes.

15 THE COURT: And as to his report, what is  
16 your objection?

17 MR. BAKER: That is hearsay and he is here  
18 to testify. But the document itself is a hearsay  
19 document.

20 THE COURT: Okay. Mr. MacLean.

21 MR. MACLEAN: Your Honor, on the one hand  
22 I would like a ruling on this issue. On the other hand  
23 this witness' report is not that important. We simply  
24 won't proffer the report as an exhibit to be introduced  
25 in evidence. It is in the collection I have just handed

1 to Your Honor. We can just take it out of the  
2 collection.

3 This may be an issue next week with our  
4 other experts. We are reviewing that issue. I would  
5 like to take it up early next week.

6 We are not really sure we have a strong  
7 position on that objection. I think as a mathematical  
8 matter it will save some time and effort if we can put  
9 reports in because it is easy for a witness to simply  
10 testify from the report. It just may take longer and  
11 they are here subject to cross-examination.

12 THE COURT: Well, I am happy to make  
13 evidentiary rulings necessary that --

14 MR. MACLEAN: I think it is premature at  
15 this point.

16 We introduce Dr. Sperry's report at this  
17 time.

18 THE COURT: All right.

19 MR. MACLEAN: He may refer to his report  
20 to refresh his recollection. We will not introduce that  
21 in evidence at this time.

22 THE COURT: We will proceed accordingly  
23 then. If he needs to refer to it, we will take it up as  
24 we get to it.

25 MR. MACLEAN: I am ready to proceed with

1 the witness, Your Honor.

2 THE COURT: Go right ahead.

3

4 EXAMINATION OF KRIS SPERRY

5 BY MR. MACLEAN:

6 Q. You are Dr. Kris Sperry, is that correct?

7 A. Yes.

8 Q. You are a medical doctor?

9 A. Yes.

10 Q. You are the chief medical examiner for the State  
11 of Georgia?

12 A. Yes.

13 Q. How long have you held that position?

14 A. I held that position since June of last year.

15 Q. And your office is with the Georgia Bureau of  
16 Investigation, the division of forensic sciences,  
17 medical examiner's office in Decatur, Georgia, is that  
18 right?

19 A. Yes.

20 Q. You received your bachelor of science degree from  
21 Kansas State College at Pittsburgh, Kansas in 1975?

22 A. Yes.

23 Q. You majored in biology and you had a minor in  
24 chemistry?

25 A. Yes.

1 Q. Then you obtained your M.D. degree at the  
2 University of Kansas School of Medicine in 1978?

3 A. Yes.

4 Q. Postgraduate, you did an internship at Allentown  
5 Hospital in Allentown, Pennsylvania from 1978 to '79?

6 A. Yes.

7 Q. And you were a commissioned officer in the United  
8 States Public Health Service, general medical officer  
9 from July, 1979 to June, 1981, is that correct?

10 A. Yes.

11 Q. And you were a resident in pathology at New  
12 Mexico School of Medicine, '81 to '85, correct?

13 A. Yes.

14 Q. And you were a fellow in forensic pathology for  
15 the state of New Mexico in Albuquerque, New Mexico in  
16 July, '85?

17 A. Yes.

18 Q. You have been a medical examiner and pathologist  
19 since when, Dr. Sperry?

20 A. I completed all of my training in December of  
21 1985 and I have been a full-time practicing pathologist  
22 and forensic pathologist medical examiner since that  
23 time.

24 Q. You were the associate medical investigator for  
25 the office of the medical investigator for the state of

1 New Mexico during the first half of 1986, correct?

2 A. Right.

3 Q. And then from July of '86 to December, '89 you  
4 were the medical investigator for the office of the  
5 medical investigator for the state of New Mexico,  
6 correct?

7 A. That's correct.

8 Q. That was a promotion from the earlier job?

9 A. Yes.

10 Q. You were associate medical examiner for the Fulton  
11 County Medical Examiner's Office in Atlanta, Georgia from  
12 December, 1989 to July of '91?

13 A. Yes.

14 Q. And it was in December, 1989 when you moved to  
15 Atlanta, Georgia for that job?

16 A. Correct.

17 Q. And then you were in 1991 promoted to deputy chief  
18 medical examiner at the Fulton County Medical Examiner's  
19 Office in Atlanta, is that correct?

20 A. Yes.

21 Q. You held that position in June, 1997?

22 A. Yes.

23 Q. In June, 1997 you were promoted to chief medical  
24 examiner for the State of Georgia?

25 A. Yes.

1 Q. You have been an instructor at the Department of  
2 Pathology, University of New Mexico School of Medicine in  
3 January, '86 to June of 1986, is that correct?

4 A. Yes.

5 Q. You assistant professor at the Department of  
6 Pathology, University of New Mexico School of Medicine  
7 since July, '86 to December, '89?

8 A. Yes.

9 Q. And you are currently and have been since August  
10 of 1990 a clinical assistant professor at the Department  
11 of Pathology at Emory University School of Medicine,  
12 Atlanta, Georgia?

13 A. Yes.

14 Q. You are licensed as a doctor in New Mexico,  
15 Georgia and inactive license in Minnesota?

16 A. Yes.

17 Q. In Minnesota you were in the service?

18 A. Yes, public health service.

19 Q. You have certain board certifications. You have a  
20 certification from the the National Board of Medical  
21 Examiners parts one and two and three?

22 A. Yes.

23 Q. What is that, Dr. Sperry?

24 A. That is a series of three examinations, that the  
25 first two are given halfway through and near the end of

1     medical school, and many medical schools such as the  
2     University of Kansas require successful completion of  
3     both those parts in order to graduate.

4                     The third part of the examination is  
5     given sometime usually about a year after finishing  
6     medical school and successful completion of the third  
7     part as well as the first two parts are necessary in  
8     order to gain medical license in the majority of the  
9     states in the United States.

10    Q.     You have held that certification since --  
11    continuous since 1979?

12    A.     Oh, yes.

13    Q.     And then you are also certified by the American  
14    Board of Pathology in anatomic pathology and clinical  
15    pathology?

16    A.     Yes.

17    Q.     What is that?

18    A.     All the medical specialties in the United States  
19    have their own certifying boards and the American Board  
20    of Pathology is the one that governs people like myself  
21    that train in pathology.

22                     They offer a variety of different  
23    examinations that can only be taken after the applicant  
24    has successfully completed a certain period of training  
25    in those disciplines, in those areas.

1                   Anatomic pathology and clinical pathology  
2                   are the basic fundamental training that a person in  
3                   pathology residency would undergo.

4                   When I completed my residency it was four  
5                   years. Now residency is five years. The time is spent  
6                   equally between anatomic and clinical.

7                   Following that then if the board finds the  
8                   individual is qualified, they may sit for the  
9                   examination, which has a pass rate of about 60 percent.

10                  Q.       You are also certified by the American Board of  
11                   Pathology in forensic pathology and you have been  
12                   certified by them since 1986, correct?

13                  A.       Yes.

14                  Q.       How is that different than the other two  
15                   certifications?

16                  A.       Forensic pathology as well as a number of  
17                   different subspecialties are governed by the American  
18                   Board of Pathology. In order to become certified in one  
19                   of these areas such as forensic pathology it requires  
20                   further training that must be documented and proven and  
21                   then application for sitting for another examination and  
22                   the pass rate for the forensic pathology test is about 50  
23                   percent.

24                  Q.       You are also a fellow -- member of a number of  
25                   professional associations?



1 A. Yes.

2 Q. I won't list them all. You are a fellow with the  
3 American Society of Clinical Pathologists?

4 A. Yes.

5 Q. And you are a fellow of the American Academy of  
6 Forensic Sciences?

7 A. Yes.

8 Q. You have a number of other appointments. I  
9 understand that you were the chairman of the forensic  
10 pathology counsel from 1994 to 1996, is that correct?

11 A. Yes.

12 Q. How long have you been a member of the forensic  
13 pathologist counsel?

14 A. I served on that counsel for a total of eight  
15 years. I served two terms and then filled out the end of  
16 a term of another individual that had been on the counsel  
17 but left prematurely.

18 I served as chairman of the counsel for  
19 two years. Basically I got reappointed sometime in the  
20 future but my -- at least eight years was the longest I  
21 could be on that in an unbroken stretch.

22 Q. What is the forensic pathology counsel?

23 A. That is a part of the American Society of Clinical  
24 Pathologists. That is the largest organization for  
25 pathologist in the world.

1                   Each of the different disciplines in  
2 pathology has a counsel and as part of the organization,  
3 each of those counsel overseas the development and  
4 implementation of the continuing education in their own  
5 particular field or subdisciplines.

6                   Basically I was a member of the forensic  
7 pathology counsel and chairman for the final two years of  
8 my term and I participated in and oversaw continuing  
9 education in forensic pathology for the largest pathology  
10 organization in the world.

11       Q.       You are also a panel member, diagnostic and  
12 therapeutic technology assessment program of the American  
13 Medical Association from 1988 to the present?

14       A.       Yes.

15       Q.       You are a member of the Board of Educators of the  
16 American Journal for Forensic Medicine and Pathology and  
17 were from 1988 to 1996?

18       A.       Yes.

19       Q.       And you are certified as an instructor for police  
20 and law enforcement continuing education, state of  
21 Georgia from 1992 to the present?

22       A.       Yes.

23       Q.       And you have a number of publications. You have  
24 published articles in the Journal of America Medical  
25 Association, American Journal of Pathology, Journal of

1 Forensic Sciences and the American Journal of Forensic  
2 Medicine, is that correct?

3 A. Yes.

4 Q. Exhibit 111 which is the first exhibit in the  
5 package that I gave you is your curriculum vitae.

6 I never have known how to pronounce  
7 that.

8 That is your CV?

9 A. Yes.

10 Q. You submitted that to me as a representation of  
11 your credentials?

12 A. Yes.

13 Q. It is true and accurate?

14 A. Yes, as of last November.

15 Q. Dr. Sperry, explain to the Court briefly what your  
16 job is as a forensic pathologist and medical examiner.

17 Is there a difference between forensic  
18 pathology and a medical examiner?

19 A. A medical examiner is someone who is appointed  
20 into a position rather than a coroner that is an elected  
21 individual. The vast majority of states -- there are  
22 about 17 in the United States that still have coroners.

23 The coroner doesn't have to be a medical  
24 professional. Few states require them to be physicians.

25 A medical examiner is someone like myself

1     who is appointed into a position and not elected or  
2     affiliated with any political situation.

3                 Now, forensic pathology is a physician  
4     that specializes in pathology, the area of disease and  
5     the application of interpretation of trauma and disease  
6     on the individual, the human being. And also specializes  
7     in the area of death investigation.

8                 Typically we investigate sudden,  
9     unexpected, unnatural, undetermined, questionable or  
10    otherwise unknown deaths and as part of the  
11    investigations we conduct autopsies and initiate various  
12    studies and such, a toxicology examination, we collect  
13    evidence that is submitted and then interrupt those  
14    results of the evidence and the context of the case in  
15    its entirety with the basic goal being to determine two  
16    things. What is called the cause of death, what is it  
17    that killed the person. Whether it is a skull fracture  
18    or lung cancer, establish wound or thousands of other  
19    sorts of things.

20                And also from the perspective of  
21    completing death certificates, we are called upon to  
22    determine what is called the manner of death. Is the  
23    death an accident, suicide, homicide, natural death or  
24    some situations what we call an undetermined or  
25    unclassified matter of death.

1                   As part of this determination, we are  
2                   called upon to again visit crime scenes, look at  
3                   photographs from crime scenes, evaluate various pieces of  
4                   evidence that are in relationship to the body or where a  
5                   crime may or may not have been committed and to interpret  
6                   all these things together in the context of the autopsy  
7                   and again the determination of the cause and manner of  
8                   death.

9                   Ultimately we may be called upon to  
10                  testify as to our opinion as a result of the findings.

11                  THE COURT: Let me ask you one question.  
12                  Your position of chief medical examiner, is that a  
13                  full-time job?

14                  A.        Yes.

15                  THE COURT: And you're not here today in  
16                  your capacity as chief medical examiner for the State of  
17                  Georgia, right?

18                  A.        No.

19                  THE COURT: So, obviously you are allowed  
20                  some outside work and income?

21                  A.        Yes.

22                  THE COURT: Any restrictions on that?

23                  A.        Only restriction is that the GBI placed on me when  
24                  I started was I was asked not to testify for the defense  
25                  in criminal cases except situations where this was -- I

1 was given permission to do so by my superiors.

2 Q. And is a habeas, civil habeas corpus case  
3 challenge on conviction of someone within the parameters  
4 of that?

5 A. No. Not as outlined to me and not within the  
6 specifics of the agreement that I was asked to adhere  
7 to.

8 Additionally, certain cases actually such  
9 as this one that I have handled or I initiated reviewing  
10 and working were started before I became employed with  
11 the Georgia Bureau of Investigation. And I was  
12 specifically allowed to complete out my participation in  
13 cases I started prior to that appointment.

14 Civil hearings, even regarding this, as  
15 far as I understand it and as I have been told are not  
16 things that I have been asked to exclude from my outside  
17 work.

18 THE COURT: Go ahead.

19 Q. Now, you explained what a medical examiner does.  
20 I am not repeating that question.

21 I would like to know the scope of your  
22 responsibility in terms of your jurisdiction, as chief  
23 medical examiner for the State of Georgia.

24 How does that compare to your prior  
25 position as the deputy chief medical examiner for Fulton

1 County?

2 A. Well, my prior position I was second in charge of  
3 the Medical Examiner's Office in Atlanta. We covered  
4 only Fulton County, which basically is Atlanta.

5 However, between 1989 and July, 1997 the  
6 State of Georgia had a contract with the Fulton County  
7 department to provide autopsy services at the state crime  
8 lab. Actually, I worked along with other pathologists  
9 continuously splitting my time between Fulton County and  
10 the state crime laboratory office, which are about ten  
11 miles apart.

12 In July -- earlier in 1997 it was decided  
13 to implement the law that had been drafted in 1990  
14 establishing a position of chief medical examiner, which  
15 never had been established or never had been filled. As  
16 part of that the State of Georgia let the contract run  
17 out between the state and Fulton County and I and three  
18 other pathologists at the Fulton County office severed  
19 our employment with Fulton County and came to work for  
20 the state establishing a medical examiner's office on  
21 July 1st, almost in an overnight situation.

22 The duties primarily had been for Fulton  
23 County doing cases for the state crime lab through  
24 contracts. I now have authority and oversee death  
25 investigation and perform autopsies for a 153 of the 159

1 counties in the state.

2 That is, the Medical Examiner's Office in  
3 Atlanta gets cases literally from every corner of the  
4 state of Georgia.

5 THE COURT: What is your primary source of  
6 income?

7 A. It is my employment by the state.

8 THE COURT: Go ahead.

9 Q. As the medical examiner, chief medical examiner  
10 for the State of Georgia, do you actually get involved in  
11 doing autopsies and doing the work that a forensic  
12 pathologist does?

13 A. Absolutely, yes.

14 Q. How many autopsies do you personally perform on  
15 the average in a year, would you say?

16 A. Somewhere between 250, 300. There will be more  
17 this year. We have a much heavier caseload than we had.

18 Q. That is what you personally do?

19 A. Yes.

20 Q. How many autopsies does your office do on the  
21 average?

22 A. Altogether my office did 2,300 last year.

23 Q. As part of your job as forensic pathologist, you  
24 regularly testify in court?

25 A. Oh, yes.



1 Q. And you testify in both criminal and civil  
2 matters?

3 A. Yes.

4 Q. Approximately how many times a year do you testify  
5 in court?

6 A. The last three or four years it has been  
7 approximately 40 times a year.

8 Q. When you testify in criminal actions, what  
9 percentage of the time do you testify for the prosecution  
10 and what percentage of the time for the defendant?

11 A. It has been about 95 percent for the state or the  
12 government, for the prosecution, with five percent for  
13 the defendant. That has dropped off. Within the next  
14 couple years it will be much, much less than that.

15 Q. Have you testified in Tennessee before?

16 A. Yes.

17 Q. In connection with work you have done in  
18 Tennessee, have you become generally familiar with the  
19 work of the Tennessee criminal laboratory and the work of  
20 Dr. Harlan, the medical examiner that testified in this  
21 case?

22 A. In a general sense, yes.

23 Q. Now, you understand this is a capital federal  
24 habeas corpus case and we represent the petitioner, Mr.  
25 Rahman?

1 A. Yes.

2 Q. Formerly known as James Jones, Junior?

3 A. Yes.

4 MR. MACLEAN: Your Honor, during the  
5 course of the proceeding we may be referring to the  
6 petitioner as Abu-Ali. That is how we refer to him. His  
7 name isn't regarded as a first name or second name. That  
8 is what is easiest for me.

9 Sometimes we will be referring to him as  
10 Mr. Jones, if the Court doesn't have any problem.

11 THE COURT: The record is now clear it is  
12 the same person. I don't have any problem with it.

13 Q. We retained you to review some of the evidence in  
14 this case and to render a professional opinion regarding  
15 that evidence, isn't that correct?

16 A. Yes.

17 Q. I would like to go through items that we asked you  
18 to review and ask you whether this was correct.

19 First of all, we asked you to review the  
20 testimony of Charles Harlan, M.D., at the trial in this  
21 case back in 1987?

22 A. Yes.

23 Q. And also Dr. Harlan's autopsy report which was  
24 used at that trial?

25 A. Yes.

1 Q. We asked you to review certain crime scene  
2 photographs of the deceased, Mr. Patrick Daniels, and  
3 those would include Exhibit 2 B-G, three D and four as  
4 they were identified in the trial?

5 A. Yes.

6 Q. We asked you to review excerpts from the testimony  
7 of Devalle Miller where he described the killing in this  
8 case?

9 A. Yes.

10 Q. We also asked you to review Devalle Miller's first  
11 statement to police, again where he described the killing  
12 in this case, right?

13 A. Yes.

14 Q. We asked you to review certain investigative  
15 reports of Detective Garafola regarding the crime scene?

16 A. Yes.

17 Q. And we asked you to look at the affidavit and  
18 search warrant relating to Mr. Jones, correct?

19 A. Yes.

20 Q. And we asked you to look at the crime lab report  
21 that talks about blood staining or the absence of blood  
22 staining, correct?

23 A. Yes.

24 Q. We asked you to look at a section from the  
25 prosecutor's internal memo on where he discussed what we

1 refer to as the blood evidence?

2 A. Yes.

3 Q. Now, since that time have you also reviewed the  
4 entire TBI file, Tennessee Bureau of Investigation file  
5 relating to the forensic work done in this case?

6 A. Yes.

7 THE COURT: Let me ask you this. We have  
8 another expert witness today, right?

9 MR. BAKER: Yes, sir.

10 THE COURT: Anybody invoking the rule or  
11 is the expert going to sit through this?

12 MR. BAKER: I told him the rule was in  
13 place. He is outside.

14 MR. MACLEAN: The area of his testimony  
15 doesn't overlap this. He is a psychologist.

16 THE COURT: Okay. I wanted to know what  
17 was going on. I was trying to get the parameters. Go  
18 ahead.

19 Q. Let me ask you to look at what we have marked  
20 Exhibit 112. This is a report by Detective Garafola?

21 A. Yes.

22 Q. Is that one of the documents we asked you to look  
23 at?

24 A. Yes.

25 Q. Will you look down at the bottom of the document

1 and the sentence that starts with the word after, third  
2 line up -- after that she could here blood coming from  
3 Patrick's mouth and she felt someone hit her in the  
4 back.

5 That is in reference to an interview that  
6 Detective Garafola had with the other victim, Norma  
7 Norman?

8 A. Yes.

9 Q. Turn over to about the six line down. Do you see  
10 the sentence relating to Detective Garafola's comment, I  
11 also observed a large amount of blood spattering on the  
12 items near the victim. It was on the walls, bar and  
13 divider.

14 Do you see that?

15 A. Yes.

16 Q. I would like you to look at Exhibit 113. That is  
17 the, I believe, the autopsy report that was prepared in  
18 this case by Dr. Harlan, correct?

19 A. Yes.

20 Q. Did you review the autopsy report?

21 A. Yes.

22 Q. I would like for you to look at Exhibit 114.  
23 Exhibit 114 is the testimony of Dr. Harlan in the trial  
24 in this case back in 1987.

25 Do you remember, did you review that

1 testimony?

2 A. Yes.

3 Q. Then I would like you to look at Exhibit 115 which  
4 is the search warrant that was issued. I believe I have  
5 attached to that a document which was a deposition,  
6 Exhibit 77 and Exhibit 44, which is another police report  
7 regarding the items seized from the home of James Jones  
8 on or February 19, 1986?

9 A. Yes.

10 Q. You will note that the record shows that the  
11 killing in this case occurred sometime in the evening of  
12 February 17th and you will note this search warrant was  
13 issued at 3:15 p.m. on February 19, 1986?

14 A. Yes.

15 Q. All right. And then --

16 THE COURT: Direct my attention to where  
17 it says --

18 MR. MACLEAN: Your Honor --

19 THE COURT: February what?

20 MR. MACLEAN: February 19th, the front  
21 page.

22 THE COURT: I am sorry. I was looking at  
23 the wrong document.

24 Q. And then the last page of the document is  
25 actually -- it appears that this memo was prepared on

1 9:30 hours which would be 9:30 in the morning on February  
2 19, 1986. You will see it at the bottom of the last  
3 page.

4 And then the next document I believe is  
5 Exhibit 116 which is the evidence -- receipt indicating  
6 the receipt of the items that had been seized at James  
7 Jones' home by the Tennessee Bureau of Investigation with  
8 the request for examination.

9 Do you see that?

10 A. Yes.

11 Q. Do you see on the second page, not the cover page,  
12 but the next page it identifies one pair of men's blue  
13 work pants, blood stained; one pair of Omens blue work  
14 pants, mud on legs; one pair of men's shoes, gray, mud on  
15 soles and one man's wool coat, black?

16 Do you see that?

17 A. Yes.

18 Q. And then there is another request for examination  
19 after that. And then you will see the next page or  
20 document Exhibit Number 117, correct?

21 A. Yes.

22 Q. What is Exhibit 117?

23 A. Exhibit 117 is the final report -- actually one of  
24 the final reports. This one particularly from the  
25 Tennessee Bureau of Investigation addresses presence and

1     absence of blood on a number of different items that were  
2     submitted and, in fact, really deals with the items  
3     listed as having been collected and submitted as listed  
4     in Exhibit 116.

5     Q.     What does this laboratory report say about blood  
6     stains?

7     A.     This looks specifically at the blue work pants,  
8     in fact both pairs of blue work pants and the black  
9     coat.

10                   The two pairs of blue work plants are  
11     designated number three and four and black coat is  
12     designated number six. And a examination of all three of  
13     these items as delineated on the bottom of the first page  
14     and top of the second page reveals that testing failed to  
15     indicate the presence of blood staining on these three  
16     articles of clothing, two pairs of pants and a black  
17     coat.

18     Q.     Dr. Sperry, you notice that in the Exhibit Number  
19     116 it refers to men's blue work pants, blood stained but  
20     in the other document, the record was issued on May 22,  
21     1986, Exhibit 117, it says tests failed to indicate the  
22     presence of blood staining?

23     A.     Yes.

24     Q.     How do we explain that?

25     A.     Well, it is very simple. Everything that appears



1 to be blood staining on clothing is not blood.

2 When these items, especially that pair of  
3 pants was collected as evidence the officer that  
4 collected it and entered it into evidence made a visual  
5 observation that it appeared to be blood stained. Of  
6 course, that must be confirmed though by chemical  
7 testing. And testing done to the pants revealed whatever  
8 the stains were was not blood.

9 That is the whole purpose of this, doing  
10 this kind of testing. Because visual recognition of  
11 something as being blood or not blood is completely  
12 unreliable.

13 MR. MACLEAN: Your Honor, at this time I  
14 have one copy of the file from the Tennessee Bureau of  
15 Investigation. I have not premarked it. I would like  
16 that to be marked Exhibit 117 A.

17 THE COURT: All right. Mr. Baker, have  
18 you seen that?

19 MR. MACLEAN: I gave a copy to Mr.  
20 Baker.

21 That was a certified copy we received  
22 pursuant to our subpoena in this case.

23 Q. Now, you have reviewed the Tennessee Bureau of  
24 Investigation file which I have just introduced in  
25 evidence, is that correct?

1 A. Yes.

2 Q. That is 117 A. Now, based upon your review of  
3 that file, were you able to determine what kind of  
4 testing for blood the Tennessee Bureau of Investigation  
5 performed?

6 A. Yes. Once I saw the documents myself, I could  
7 tell you what testing was done. I had not seen those  
8 prior to last evening. But having seen those, I can tell  
9 you.

10 Q. Please explain to the Court what kind of testing  
11 was done.

12 A. Yes. The pants and the coat were tested using two  
13 different chemicals, that is called presumptive testing  
14 for blood.

15 THE COURT: Let me make sure I  
16 understand. You are looking at the report that is the  
17 back-up to Exhibit 117 where the conclusions expressed  
18 there was no blood staining.

19 Is that correct?

20 A. No.

21 THE COURT: Could I see the report.

22 MR. MACLEAN: He looked at the report.

23 THE COURT: I haven't seen the 117 A.

24 MR. MACLEAN: I am sorry. I didn't make  
25 an extra copy of 117 A.

1                   117 is the final report where they state  
2 the tests failed to indicate the presence of blood  
3 staining.

4                   THE COURT: Right. The point you are  
5 trying to make at this point, 116 says blood stains, 117  
6 says no blood stains.

7                   How does 117 A --

8                   MR. MACLEAN: Includes the work paper of  
9 the Tennessee Bureau of Investigation and the other items  
10 in its file which reflect the kind of work that they did  
11 in testing for blood stains or the absence of blood  
12 stains.

13                   I asked Dr. Sperry based upon his review  
14 of the file what he was able to determine that the  
15 Tennessee Bureau of Investigation did to look for blood  
16 stains.

17                   THE COURT: So, it is a back-up.

18                   MR. MACLEAN: It is the back up.

19                   THE COURT: Back up plus a lot of other  
20 stuff.

21                   MR. MACLEAN: Right. The entire file. In  
22 just a second I will introduce into evidence two pages  
23 from that to isolate those pages from the rest.

24 Q.           Go back and start your answer again, on the  
25 question of what you were able to determine through your

1 review of the file that the Tennessee Bureau of  
2 Investigation Crime Lab did?

3 A. Yes. The serologist at the crime lab visually  
4 identified areas on the coat and the work pants that  
5 were thought to be blood stains and as they identified  
6 areas of potential, possibly of blood on the areas, that  
7 is the first stage, to look and see if there is anything  
8 that might be a stain.

9 Then the serologist used two different  
10 chemicals called presumptives for blood. They are very,  
11 very sensitive chemicals that if positive will suggest  
12 strongly there may be blood there. This has to be  
13 confirmed through subsequent testing.

14 In other words, if the initial testing is  
15 negative there is no blood --

16 THE COURT: Like a screen test?

17 MR. MACLEAN: Yes.

18 A. Yes. She used two different methods and  
19 designated by initials. When I saw the report, I knew  
20 what it was. One method is tetramethylbenzidine, TMB and  
21 the other is phenolphthalin.

22 I wrote these down for the court reporter.

23 It is approximately a thousand times more  
24 sensitive than the phenolphthalin method. Both are  
25 extremely sensitive.

1                   If they are positive, if they achieve  
2 positive color changes on the testing, it is done to see  
3 if it is truly blood.

4                   Those methods were utilized on the pants.  
5 They were all negative.

6                   On the coat there was some very weak  
7 positives found. But subsequent, more detailed  
8 examination of the material in these areas where a weak  
9 positive was found was turned up to be negative.

10                  The ultimate report given, and that is  
11 you will see Exhibit 117, states that there is no --  
12 failed to indicate the presence of blood staining which  
13 would be an appropriate interpretation of the testing  
14 procedures they used.

15 Q.       Dr. Sperry, the testing procedures that were used,  
16 are those normal testing procedures in a crime lab?

17 A.       Oh, yes.

18 Q.       Are they reliable testing procedures?

19 A.       Yes, quite.

20 Q.       Now, from your review of the autopsy report and  
21 Dr. Harlan's testimony and other documents and evidence  
22 that you reviewed, can you explain to the Court the  
23 nature of the wounds the deceased Patrick Daniels  
24 received?

25 A.       Yes. He had a total of six stab wounds on the

1 front of his chest and four of the stab wounds  
2 specifically entered into the heart, with one of them  
3 actually striking the aorta within the heart. That is  
4 the main blood channel that takes the blood out of the  
5 heart. These were all clustered over the upper front of  
6 the chest.

7 Q. Now, we asked you to render a professional opinion  
8 on the following question, whether if the petitioner  
9 Jones or Abu-Ali actually did the stabbing is it likely  
10 or plausible that his clothing would not have had any  
11 blood stains.

12 Do you recall us putting that question to  
13 you?

14 A. Yes.

15 Q. Based upon your review of the materials, were you  
16 able to reach any opinions?

17 A. Yes.

18 Q. What are your opinions?

19 A. In my opinion if he had done the stabbings and  
20 inflicting these wounds on the front of the deceased  
21 individual then he would have -- the assailant would have  
22 had blood from those wounds transferred to his body or  
23 clothing, covering part of his clothing.

24 Q. Would this blood have been on the clothing he was  
25 wearing at the time?

1 A. Yes.

2 Q. Would the blood stains that would have been caused  
3 by that have been detectible or discernable during the  
4 course of the kind of testing that occurred by the  
5 Tennessee criminal lab in this case?

6 A. Yes.

7 Q. During the stabbing, how quickly would the blood  
8 have sprayed from the wounds?

9 A. Well, especially with the wounds that struck the  
10 heart -- and four of the six wounds struck the heart --  
11 whichever was the first wound that struck the heart would  
12 have resulted in immediate blood coming forth profusely  
13 from the stab wound itself.

14 Literally upon withdrawing the knife from  
15 that particular wound blood would come forward with -- in  
16 a very steady stream.

17 Q. And blood would have continued to spray after the  
18 first and second wounds?

19 A. Yes. As long as the heart is pumping that blood  
20 would continue to come with each beat of the heart. It  
21 would push forth from the wound.

22 Each subsequent wound to the heart,  
23 especially, would result in more blood coming from each  
24 one of the subsequent wounds.

25 Additionally, as each stab wound -- with a

1 subsequent stab wound was inflicted, as the blood is  
2 coming out on the chest from the stab wounds themselves,  
3 the action of the secondary stabbing, each subsequent  
4 stabbing motion with the hand and knife stabbing the  
5 chest would result in blood continuing to accumulate, to  
6 splatter in the area, the hand, the knife, clothing that  
7 is on and a round the hand and even inches away from the  
8 chest itself, because of the motion of the spattering.  
9 It is like striking a wet sponge.

10 Q. Let's see if I understand this correctly. With  
11 the first stab wound that penetrates the heart or the  
12 aorta, as soon as the knife comes out there is going to  
13 be some spray at that point, is that correct?

14 A. Yes.

15 Q. And also some of the blood on the knife itself may  
16 splatter?

17 A. Yes. That is called cast off blood, as the knife  
18 is pulled back. Just the motion of doing that will will  
19 cause the blood to spray off it into the immediate  
20 environment.

21 Q. You have two sources of blood. You have blood  
22 shooting out and blood being cast off from the knife as  
23 it is coming out?

24 A. Exactly.

25 Q. When the second stab wound goes into the chest



1       that will push blood out of the first wound, is that  
2       correct, and propel the blood?

3       A.       It will do that, yes.

4       Q.       And then between the second knife wound is  
5       released more blood will come out of that wound as well?

6       A.       Yes.  Additionally the stabbing, striking the  
7       chest will cause the blood that is accumulating already  
8       there on the chest to spray.  That is being struck by the  
9       hand and knife during the course of the stabbing.

10               Really there are three mechanisms, if you  
11       will, for the blood to be in the environment, coming from  
12       the wound itself.

13               The cast off from the knife and also the  
14       spraying that results from -- or splatters perhaps is a  
15       better understandable word -- the result of the striking  
16       of the chest with a knife in an area that is blood  
17       saturated.

18       Q.       In Detective Garafola's report, Exhibit 112, where  
19       he says I also observed a large amount of blood  
20       splattered on the items of the victim, on the walls, bar  
21       and divider, in your opinion where did that blood come  
22       from, blood he is referring to in the report?

23       A.       From really all three of the mechanisms; the  
24       blood coming out of the wounds itself, the presence of  
25       the shirt would dampen somewhat the flow we are talking

1     about; the wound in connection with the heart. It will  
2     squirt out to some degree. Also the cast off from the  
3     knife and the splatter that occurs from repeated  
4     stabblings.

5     Q.     Would any of that blood have come out of the mouth  
6     or nose?

7     A.     Well, the mouth was covered completely with the  
8     duct tape. No, sir, the opening of the nose was exposed  
9     but for that particular blood reaching the distance it  
10    did away from the body, in looking at the photographs  
11    also that depict this, in my opinion the blood away from  
12    the body, the splattering action didn't come from the nose  
13    itself.

14    Q.     When you looked at the photographs, were you able  
15    to determine the direction of the splatter that appeared  
16    on different parts of the body?

17    A.     Well, yes. Essentially it is obvious that the  
18    decedent was on his back for the whole time of when the  
19    stab wounds were established and then immediately  
20    thereafter. Because of the blood flow path, his neck and  
21    face and on the front of his body shows no evidence of  
22    any droplets or spatters going downward.

23                 There is saturation of the shirt and flow  
24    going down the neck in a manner indicating he was on his  
25    back the whole time?

1                   He didn't move appreciably from that  
2 position in general during the course of the stabbing and  
3 immediately thereafter.

4                   MR. MACLEAN: If I may, I would like to  
5 approach the witness. I have another document I would  
6 like to give him.

7                   THE COURT: All right.

8                   MR. MACLEAN: If I could mark this 117 B.

9 Q.           Dr. Sperry, I just handed you Exhibit Number 117  
10 B, which is two pages of handwritten notes.

11                   Do you see Exhibit 117 B?

12 A.           Yes.

13 Q.           Are you familiar with these two pages?

14 A.           Yes.

15 Q.           Where did these two pages come from?

16 A.           These are part of the complete working file, the  
17 notes and case file documenting the procedures of the TBI  
18 Lab in conjunction with the final report that was issued,  
19 which was Exhibit 117.

20 Q.           Now, the first page of of 117 B, what does that  
21 page tell you?

22 A.           This is a description of the examination of the  
23 black coat. It tells how the coat appeared and the  
24 description of it, description of the label and then  
25 areas that the serologist examined and thought might have

1 exhibited some blood staining.

2 She then subsequently documents the  
3 testing procedure in the lower paragraph that is just to  
4 the right of the diagram of the coat.

5 The diagram itself shows where she made  
6 her cuts in the material and tests of material and the  
7 text of the right-hand side document, what she found,  
8 and how she went through the subsequent testing of the  
9 weakly positive areas that turned out to be negative for  
10 blood.

11 It ultimately tells us that the testing of  
12 this garment revealed no evidence of blood.

13 Q. Look at the second page and tell me how you  
14 interpret the notes on that page?

15 A. The second page deals with a knife that was  
16 submitted as a piece of evidence. The paragraph above  
17 the diagram, the knife is delineated, where it came from,  
18 the Vanderbilt pathology lab, and what it looked like.

19 And then the depiction of the knife itself  
20 both the one side, side A and B has cross hatching or  
21 irregular squiggly lines to show where apparent blood  
22 stains were on the knife.

23 This was tested.

24 Down at the bottom of the page you can  
25 barely see it but it denotes both sides A and B were

1 tested for the presence of blood and found the material  
2 staining was blood and indeed was human blood.

3 Q. What does this tell you about the amount of blood  
4 and likelihood blood would have sprayed on the clothing  
5 of the the assailant?

6 A. The depiction showing the distribution of the  
7 blood on the side of the knife extended down to the  
8 handle and where the the blade is attached to the handle  
9 is very typical of what occurs in stab wound injuries  
10 where the stabs inflict trauma to the heart or places  
11 there is going to be profuse bleeding.

12 As I described earlier as the hand holding  
13 the knife repeatedly stabs into the body in a blood  
14 stained area where clothing is saturated with blood,  
15 blood will splatter and actually get up on to the handle  
16 between the space of the finger and handle.

17 This shows the inevitable direct transfer  
18 of blood through spattering when someone is being stabbed  
19 repeatedly by an assailant and where the injuries produce  
20 profuse bleeding.

21 Q. Dr. Sperry, was there anything in the autopsy  
22 report or in Dr. Harlan's testimony that is inconsistent  
23 with the opinions you have expressed today regarding  
24 blood spattering and the likelihood it would have been on  
25 the clothes of the assailant?

1                   Is there anything in any of that  
2 testimony or the report that is inconsistent with your  
3 opinions?

4       A.       Not that I recall, no.

5       Q.       Does the report, or did Dr. Harlan's testimony  
6 even address the issue of blood spattering?

7       A.       No, it did not.

8       Q.       Is there anything in the TBI Lab work that you  
9 reviewed that is inconsistent with your opinions  
10 today?

11      A.       No.

12      Q.       I would like for you now to look at Exhibit 118.

13                   THE COURT: Before we go there, the  
14 excerpt is 117 B. I have got one page that says on black  
15 coat and another page that says on butcher knife. What  
16 about the pants?

17                   MR. MACLEAN: Your Honor, that --

18      A.       Well, the pants are in the overall 117 A. I can  
19 find those for you if you wish. There is a sheet that  
20 goes into that.

21                   THE COURT: Okay.

22      Q.       Dr. Sperry, let me ask you about 117 A.

23                   THE COURT: It is a single page prior to  
24 the page about the coat that says Exhibit 12 at the top?

25      A.       Should be --

1                   THE COURT: One pair of blue jeans. One  
2 pair of blue work pants. All right.

3                   We are talking about two different pairs  
4 of pants, right?

5           A.       Yes.

6                   THE COURT: Direct me to the pages you say  
7 that indicate -- that are the back-up to those reports  
8 that indicate there was no blood.

9           A.       That would be there.

10                  THE COURT: In the middle of the page it  
11 says he examines Exhibit 3 and no BL.

12                  I assume that is blood?

13       A.       Yes.

14                  THE COURT: Which pair of pants is that?

15       A.       The pants that had the stains on the front that  
16 were thought to be blood.

17                  THE COURT: All right. We had two pair of  
18 pants.

19                  Where is the other one?

20                  MR. MACLEAN: The other pair I believe  
21 was --

22                  THE COURT: It is Exhibit 4 on the next  
23 page.

24                  MR. MACLEAN: Yes, item four. Item number  
25 three, according to the Exhibit 117, was the pair that

1 was originally identified as having blood stains and  
2 found not to have blood stains.

3 Number four was the other pair.

4 A. The following page, the page after the diagram of  
5 the pants, in the middle of the page says these pants,  
6 neither in big brown paper bag --

7 THE COURT: I see how they link up.

8 Q. Dr. Sperry, I now would ask you to look at Exhibit  
9 119, please.

10 A. Yes.

11 Q. Exhibits 118 is the transcript of a tape recorded  
12 interview that the prosecution conducted of Devalle  
13 Miller I believe on March 23, 1987.

14 Do you see at the bottom of the cover page  
15 here which is date stamped 100 where Devalle Miller was  
16 describing what happened at the time of the killing and  
17 he says he went over -- he left Mr. Duffy down -- he got  
18 the name confused -- and went over to the kitchen sink  
19 and grabbed -- he went through drawers and picked out a  
20 knife and came back over to Mr. Duffy and proceeded to  
21 stab him numerous time both in the back and in the  
22 chest.

23 Do you see that?

24 A. Yes.

25 THE COURT: The he in this context is Mr.



1 Jones?

2 MR. MACLEAN: Right, he is referring to  
3 Mr. Jones as doing the attacking here. Mr. Duffy was  
4 really Mr. Patrick Daniels, the deceased.

5 Q. Dr. Sperry, that description particularly with  
6 reference to the stabbing in the back and in the chest,  
7 is that consistent with the autopsy report in Dr.  
8 Harlan's testimony?

9 A. No, it is not.

10 Q. Is it consistent with your review of the evidence  
11 in this case?

12 A. No, not at all.

13 Q. Why not?

14 A. The deceased individual was not stabbed in the  
15 back at all. There were no stab wounds involving the  
16 back whatsoever.

17 They are all on the front of the chest.

18 Q. Now, I would like you to look at Exhibit Number  
19 119 which is a portion of the testimony that Mr. Devalle  
20 Miller gave in the trial of the case and the portion  
21 you have are pages 1470 through 1475 of the trial  
22 transcript.

23 Do you see that?

24 A. Yes.

25 Q. Exhibit Number 119. This is the portion of the

1 trial transcript where Mr. Devalle Miller described again  
2 to the jury in this case what happened during the time of  
3 the killing?

4 A. Yes.

5 Q. You reviewed this transcript, correct?

6 A. Yes.

7 Q. Will you please look over at the bottom of page  
8 1472.

9 A. Yes.

10 Q. And do you see at line 21 the question, I want you  
11 to describe for the jury what you saw Mr. Daniels do.

12 And the answer was at line 23, he was  
13 laying on the floor and he was -- he was face down, I  
14 believe. He was facing down. And he was just going into  
15 convulsions and his feet was kicking, and you know, you  
16 could actually hear his heart pumping blood. The more  
17 rapid the convulsions got the more blood started spewing  
18 from his nose and mouth and it was -- because of the  
19 constriction of the tape it was just skeeting.

20 Do you see that?

21 A. Yes.

22 Q. Is that testimony consistent with your review of  
23 the testimony in this case?

24 A. No.

25 Q. Why not?

1       A.       Again, from the blood stain pattern that is  
2       evidenced both on the front of the decedent and the front  
3       of his body and clothing as well as the immediate  
4       environment that he is laying in, the articles, the  
5       cabinets he is beside and all, there is no evidence at  
6       all he was ever face down in my way, shape or form.

7               As I said earlier, it is clear from the  
8       scene documentation he was on his back when he was  
9       stabbed and stayed that way up until the point of his  
10      death.

11     Q.       And the photographs showed he was laying on his  
12      back?

13     A.       Yes.

14     Q.       All right. Now, I would like you to look at  
15      Exhibit 120, which are portions of the testimony that  
16      Norma Norman, the other victim, gave in this case.

17              I want you to turn to -- there are various  
18      pages. I want you to turn to page 1376.

19     A.       Yes.

20     Q.       Here she is describing what she could hear at the  
21      time of the stabbings and at line five she is asked,  
22      okay, describe the sound for us. You said like they had  
23      kicked him.

24              Answer. Right, a grunting sound.

25              Question. Who is making the grunting

1 sound?

2 Answer. Mr. Daniels.

3 Question. Describe it for us as best you  
4 can.

5 Answer. Sound like he kicked, and he said  
6 umph. And then I heard something like a gush of the  
7 blood.

8 Describe what you mean by a gush of blood.

9 Like it was -- had shot out over  
10 everywhere.

11 Did you hear any other noises?

12 No, I didn't.

13 THE COURT: What line is that? I have  
14 read the whole trial. I am familiar with it.

15 What line?

16 MR. MACLEAN: The last page of this  
17 exhibit, 1376 and it is line 11 and 12.

18 THE COURT: I am with you.

19 MR. MACLEAN: And 13 and 14.

20 Q. Dr. Sperry, does that testimony sound consistent  
21 with your opinions and review of the evidence of the  
22 blood gushing?

23 A. Yes. I think she -- what she heard, the thump was  
24 the decedent actually being stabbed.

25 Q. And she would have heard the blood gushing in the

1 manner you described?

2 A. Yes, with the wound into the heart and blood  
3 coming out. It actually can be heard. There is enough  
4 flow of blood that it is audible.

5 Q. I would like you to look at Exhibit 121 which is a  
6 portion of the deposition that was given by Detective  
7 Garafola in this proceeding. I would like you to look at  
8 pages 42 and 43.

9 A. Yes.

10 Q. And in this portion of the deposition he was being  
11 asked about the note he wrote in his report about blood  
12 splattering.

13 He says, answer -- question at line 14 on  
14 page 42 of the trial transcript.

15 What would you have meant by blood  
16 spattering?

17 Answer. Blood splatters where -- it would  
18 occur from if there was a wound and it drew blood and  
19 second wound was struck, it would splatter. I mean,  
20 because something hitting blood would cause it to  
21 splatter. So, it could have been splattered for several  
22 reasons. If there was more than one stab wound in the  
23 body it probably caused blood to splatter.

24 Why do you say if there was more than one  
25 wound?

1                   Answer. Because my statement stated he  
2                   had several wounds. I believe it says he had several  
3                   wound so I am assuming there was more than one wound  
4                   and after the first one there probably was blood spurting  
5                   out of the first wound or the second wound, and if you  
6                   hit it the second or third time it would cause it to  
7                   splatter.

8                   Do you say that from experience?

9                   Answer. Experience. That's generally  
10                  what happens.

11                  Would you agree with Detective Garafola's  
12                  statement there?

13                  A. Absolutely. That is quite accurate.

14                  Q. And would you look at Exhibit Number 122 which was  
15                  an exhibit to Detective Garafola's deposition.

16                  If you will look at the fifth page, in  
17                  these were notes he took when he inspected the scene.  
18                  The page is date stamped 221.

19                  Do you see that?

20                  A. Yes.

21                  Q. Do you see there was a stick figure there that  
22                  appears to be the figure of the victim and words written  
23                  in, blood stain, and pointing to part of the wall over  
24                  there or something from the wall?

25                  Do you see that?

1 A. Yes.

2 Q. If that is an indication of where he saw some of  
3 the blood spraying, would that be consistent with your  
4 opinion about blood spattering out, how it would occur in  
5 this case?

6 A. Yes.

7 THE COURT: Mr. MacLean, tell me who  
8 prepared this report, these notes.

9 MR. MACLEAN: Detective Garafola. These  
10 are his notes from when he inspected the scene, according  
11 to his testimony.

12 THE COURT: Is the copy I have an extra  
13 copy or is this the --

14 MR. MACLEAN: Yes, there is an extra copy.  
15 There is also a copy with the deposition we entered into  
16 evidence today.

17 THE COURT: What I need to know is whether  
18 if I mark on this I am marking on a working copy or the  
19 court file.

20 MR. MACLEAN: I have another copy. I  
21 think that is the official exhibit.

22 THE COURT: All right.

23 Q. If you will look at the page before on page 00022.  
24 It has blood splatter. Obviously that was a note he  
25 wrote.

1 Do you see that?

2 A. Yes.

3 Q. Now, I would like for you now to look at Exhibit  
4 123?

5 A. Yes.

6 Q. For the record Exhibit 123 is the internal  
7 memorandum prepared by the prosecutor in this case, Mr.  
8 John Zimmermann, to Eddie Barnard, team leader, another  
9 member of the D.A.'s office that helped prosecute this  
10 case.

11 As Mr. Zimmermann testified in the  
12 deposition, this was the memo he prepared pursuant to  
13 their internal procedures where he recommended that the  
14 prosecution seek the death penalty in this case.

15 Look over it, the very bottom of the  
16 second page, 000677.

17 A. Yes.

18 Q. Do you see there it has item that says, Roman  
19 numeral two, weaknesses in the case?

20 Do you see that?

21 A. Yes.

22 Q. If you turn over to paragraph C. This is the  
23 second toward the top of the next page, page 000678.

24 A. Yes.

25 Q. And here Mr. Zimmermann is outlining the weakness



1     in their case.

2                   He says in subparagraph C, TBI Lab report  
3     was unable to find any blood staining on the long wool  
4     coat worn by Jones. Photographs of the decedent's house  
5     shows blood spattering all over the kitchen. Either the  
6     defendant removes his coat before he began to stab these  
7     people, the defendant had his coat cleaned, the defendant  
8     replaced the coat found by the police with another coat,  
9     which is not likely since he would have obviously have  
10    gotten rid of the shotgun, or if the defendant did wear  
11    his coat the entire time he obviously was not present  
12    when the stabbing occurred.

13                   And then he goes on and talks about the  
14    work pants that had red spots all over it which was found  
15    not to contain any human blood stains. Red particles on  
16    the defendant's pants came from red dye from the  
17    Publishing Board where the defendant worked.

18                   In his confession Miller stated the  
19    stabbing of the deceased did not produce the blood that  
20    was spattered but that the blood that was splattered  
21    occurred as the deceased gasped for air after the  
22    defendant had gone to the second victim and begun to stab  
23    her.

24                   My first question about this is the last  
25    part of that where he talks about what Miller stated,

1 that the stabbing of the deceased did not produce the  
2 blood that was spattered but the blood that was  
3 splattered occurred was as the deceased gasped for air  
4 after the defendant went to the second victim and began  
5 to stab her.

6                    Now, assuming the defendant was the  
7    assailant and actual one that did the stabbing, does that  
8    explanation make sense to you?

9	A.	No.
---	----	-----

10	Q. Why not?
----	-------------

11           A.       Because the amount of blood that is there evident  
12       at the scene and also the distribution and appearance of  
13       the blood spattering on the side of the bar and chair  
14       even over on the deceased individuals left arm area,  
15       those could not have been produced by emanating from the  
16       decedent's nose.

17                   There is a great deal of blood that did  
18       drain from his nose and some bloody nose -- from the  
19       blood that is in the photograph that would be expected,  
20       but blood is not ejected or sprayed.

21 In fact, on the front of the shirt there  
22 is no evidence that any of the blood that is there on the  
23 front of the shirt came from any source other than the  
24 immediate stab wounds themselves.

25 His mouth is completely blocked by the

1 tape. If he sprayed blood out of his nose there would be  
2 sprays down the front of his shirt that is not there.

3 Q. It says here in his confession Miller stated  
4 stabbing of the deceased did not produce the blood  
5 spattered but it occurred as as the decedent gasped for  
6 air after the defendant went to the second victim and  
7 began to stab her.

8 Would the spattering have occurred after  
9 the assailant left the decedent and went to someplace  
10 else or would the blood spattering occur almost  
11 immediately?

12 A. That is spattering from the stabbing itself would  
13 have occurred during the course of the infliction of the  
14 stab wounds and began as the heart was pumping blood from  
15 the holes that were put in the heart from the stab  
16 injuries. Not after this, no.

17 Q. Now, let's go to the first part of that  
18 subparagraph C where Mr. Zimmermann outlines the  
19 different possibilities.

20 He mentions here that possibly the  
21 defendant cleaned the coat.

22 Now, first of all, the instant offense  
23 occurred on the evening of February 17, 1986 which was a  
24 Monday and the items, clothing items were seized from Mr.  
25 Jones' apartment during the day of Wednesday, February

1 19th.

2 My first question is, in the report --  
3 the crime lab in inspecting the coat or any other  
4 clothes, would they have been able to determine whether  
5 the coat was recently cleaned?

6 A. It is possible they might have but not  
7 necessarily.

8 Q. Now, what kind of cleaning would be required to  
9 remove the blood stains.

10 MR. BAKER: I object unless -- he is an  
11 expert in forensic pathology. I don't know that he is an  
12 expert in clothing fibers or anything like that.

13 THE COURT: Lay a foundation.

14 Q. In the course of your years as a forensic  
15 pathologist, are you familiar with the way blood stains  
16 are formed on clothing and what is required to remove the  
17 blood stains from clothing?

18 A. Yes.

19 Q. What is the basis of your knowledge of that sort  
20 of thing?

21 A. Basis is my training. These basic questions we  
22 are talking about today are part of the training of a  
23 forensic pathologist, of being familiar with clothing,  
24 blood spattering, staining and to clean or not to clean  
25 blood stains and the ability to pick up such blood stains

1 in clothing through chemical methods and utilization of  
2 chemical methods that are reliable in finding blood even  
3 if garments that were washed or cleaned in some way.

4 Q. You are familiar with all those procedures?

5 A. Yes.

6 THE COURT: I will allow him to answer the  
7 question.

8 Q. What kind of cleaning would be required to remove  
9 blood staining from a wool coat?

10 A. In order to remove small blood stains that  
11 are visible to the naked eye, a locally aggressive  
12 cleaning -- perhaps dry cleaning or something with  
13 cleaning fluids could get rid of the stain. Especially  
14 in a black coat that is to the point it couldn't be seen  
15 with the naked eye.

16 In order to eradicate the blood soaked  
17 into the fibers and structure of the coat material to the  
18 point where even chemical testing would be negative to  
19 require such an aggressive cleaning that would end up  
20 destroying or altering the coat itself.

21 You could obviously tell an area had been  
22 scrubbed very aggressively because material would be  
23 frayed and started to show evidence of damage from very  
24 aggressive cleaning.

25 That is what would be necessary, that type

1 of aggressive cleaning that causes alteration or  
2 destruction of the material. That is necessary to  
3 eradicate the residual of blood that would be  
4 chemically detectable even if you couldn't see it  
5 with your eyes.

6 Q. Dr. Sperry, the type of blood testing done in  
7 the crime lab based upon your review of the crime lab  
8 file is the type of blood testing that would have  
9 detected blood deep in the fibers, that would have  
10 remained after a superficial cleaning or after almost  
11 any kind of cleaning except cleaning that would destroy  
12 the coats itself?

13 A. That was the second phase of the testing procedure  
14 that the serologist did, where portions of the material  
15 were cut and soaked and that fluid was tested to see if  
16 it contained blood.

17 It was negative.

18 That was exactly the procedure utilized to  
19 detect blood down in the material of the coat, but which  
20 may not be readily visible to the outside surface.

21 Q. Dr. Sperry, the lab files which have been  
22 introduced in evidence now indicate that the crime lab  
23 looked for hair fibers on the coat and were not able to  
24 find any hair fibers on the coat?

25 A. Yes.

1 Q. In your professional opinion, can one draw any  
2 conclusions from the lack of hair fibers on the coat?

3 A. Not that I am aware of, no.

4 Q. Are you aware of any statistical or scientific  
5 studies regarding the absence of hair fibers on  
6 clothes?

7 A. No.

8 Q. Are you aware of any scientific basis to draw any  
9 conclusion of absence of hair fibers on clothes?

10 A. No.

11 Q. During your years as a medical examiner and  
12 forensic pathologist, are you familiar with any case,  
13 civil or criminal, which expert testimony was presented  
14 in supporting of drawing any conclusions from the absence  
15 of hair fibers on coats?

16 A. I am not aware of any, no.

17 Q. During your years as a forensic scientist, are you  
18 familiar or aware of any case where a court has drawn any  
19 conclusion or made any decision on the basis that there  
20 was an absence of hair fibers on clothes?

21 A. I have not, no.

22 Q. Now, in this memo prepared by Mr. Zimmermann,  
23 Exhibit 123, he identified the lack of blood on the  
24 clothes as a weakness in the case.

25 Based upon your years of experience as a

1 forensic pathologist and testifying in court over the  
2 years, would you agree with Mr. Zimmermann's assessment  
3 that this was a weakness in the case?

4 MR. BAKER: Objection. That calls for  
5 speculation. He is not qualified to give that type  
6 testimony.

7 MR. MACLEAN: I think he is well  
8 qualified. He testified throughout the country, he is  
9 one of the most highly qualified forensic pathologists in  
10 the country and he is certainly familiar with these sorts  
11 of things.

12 MR. BAKER: He is not an attorney. Mr.  
13 Zimmermann is speaking to legal issues.

14 THE COURT: I think the witness covered  
15 this ground. He described his opinion and I don't think  
16 there is a foundation for him to testify about whether  
17 this context makes it a weak case or strong case.

18 You can ask all you want about the coat  
19 and the pants.

20 I don't see how that aids the trier of  
21 fact.

22 I can form my own conclusion.

23 MR. MACLEAN: May I have a moment?

24 THE COURT: Yes.

25 MR. MACLEAN: Your Honor, that is all.



1 THE COURT: Mr. Baker, whenever you are  
2 ready.

3 MR. BAKER: Thank you.

4 THE COURT: Before you get started, I had  
5 understood, Mr. MacLean, when you handed me these  
6 documents they were my copies, the Court copies.

7 I marked on a couple of them. I will ask  
8 you to substitute them and give them to Ms. Bush at the  
9 end of the day. I want to have the record clear what is  
10 my markings. Things get photocopied.

11 As I was marking them, I put my initials  
12 on them so they are clear. I just got confused. I want  
13 to make sure the record is complete.

14 MR. MACLEAN: All right. Your Honor,  
15 maybe in the future what we can do is make the ones that  
16 the witness looks at the official exhibit that actually  
17 become part of the record.

18 THE COURT: In the future I just won't  
19 write on them. I will take better notes.

20 MR. MACLEAN: I would like you to be able  
21 to write on them.

22 THE COURT: Mr. Baker.

23 MR. BAKER: Thank you.

24

25

## EXAMINATION OF KRIS SPERRY

BY MR. BAKER:

Q. Dr. Sperry, you were selected by the petitioner's counsel to participate in this case, correct?

A. Yes, I think so.

Q. You weren't appointed by the Court?

A. No.

Q. Now, how often have you appeared as a witness in a criminal case or collateral case such as this in Tennessee?

A. Well, maybe the third time or fourth time, perhaps.

Q. That you have actually been a witness or that you have been consulted?

A. That I have appeared as a witness.

Q. Have there been other cases where you just consulted?

A. A handful. A few going back to seven, eight years.

Q. Were any of those cases pursuant to your duties with the State of Georgia or New Mexico or other government agencies?

A. No.

Q. Those were personally retained cases?

A. Yes.

1 Q. Personally retained cases in Tennessee, how many  
2 have been capital murder cases?

3 A. At least, as far as the ones like this, habeas  
4 hearings?

5 Q. You mentioned there were several. How many were  
6 capital murder cases?

7 A. I think all were. Two or three. I can recall two  
8 at least. I believe there -- I believe they all were.

9 Q. Each of those cases you were retained by the  
10 defendant's counsel or state counsel?

11 A. Okay. You will forgive me if I am not familiar  
12 with who all is who. The petitioner.

13 Q. The petitioner, criminal defendant?

14 A. Yes.

15 Q. In any case, it is a petitioner or criminal  
16 defendant?

17 A. Yes.

18 Q. The state hasn't retained you?

19 A. No.

20 Q. Isn't it true that you are personally opposed to  
21 the death penalty?

22 A. Not in the least.

23 Q. Are you in favor of the death penalty?

24 A. Yes.

25 Q. And you have -- in Tennessee you have only been

1 asked to participate by representatives of a petitioner  
2 or criminal defendant, is that true?

3 A. But I have no control over who it is that asks  
4 me.

5 The state hasn't called me yet. It is  
6 true but, like I said, I have no control over who calls  
7 me.

8 Q. How were you first contacted in this case?

9 A. I believe I was contacted by Mr. MacLean.

10 Q. What was discussed in that conversation?

11 A. Very briefly, as I recall. This has been a year  
12 ago or so.

13 That he was representing a petitioner and  
14 there were issues having to do with blood splatter and  
15 injuries and asked if I would be willing to review these  
16 materials and consult with him on the matter.

17 Q. At one point Mr. MacLean and Diane McCoy met with  
18 you in Atlanta?

19 A. Yes.

20 Q. What was the purpose of that meeting?

21 A. To present me with really the vast majority of  
22 what we have discussed as exhibits today, the information  
23 that is here and various documents and photographs and to  
24 allow me to look at them, at least give some preliminary  
25 opinion what I thought.

1 Q. Do you know why Diane McCoy was present?

2 A. No.

3 Q. She is a psychologist, correct?

4 A. Yes. I forgot who she really was. I don't  
5 remember her particularly, why she came.

6 Q. So, you don't know what her purpose was to be  
7 there?

8 A. As far as coming to me, no, sir.

9 Q. Were you involved in any part of the psychological  
10 issues related to the petitioner in the case?

11 A. No. I have no knowledge of those issues nor do I  
12 involve myself with them.

13 Q. Dr. Sperry, I want to direct your attention to the  
14 coat that has been at issue in this case.

15 A. Yes.

16 Q. Have you read the testimony in this case from the  
17 the co-defendant that testified that the defendant was  
18 actually very fond of the wool coat he had?

19 A. I don't recall that specifically. It is possible.  
20 I don't recall that.

21 Q. That is, his wife got it for him for his  
22 birthday?

23 A. I don't recall that.

24 Q. Page 1454 of the transcript. Was that page  
25 provided to you?

1 A. If I am -- that is the trial testimony. 1454.

2 I don't recall having read that. I don't  
3 believe I was given that page.

4 Q. Of course, your opinion here today assumes that  
5 the clothes actually covered were the clothes he wore  
6 when the stabbing occurred, correct?

7 A. Yes. The clothes recovered and submitted as  
8 evidence.

9 I am making that assumption, yes.

10 Q. Will you -- are you aware of the testimony also in  
11 this case from two witnesses, Norma Norman and the  
12 co-defendant, Harold Devalle Miller, that the petitioner  
13 in this case was the one giving the orders, giving the  
14 commands involved in these crimes?

15 Were you aware of that testimony?

16 A. It seems like I had read something regarding that.  
17 I haven't read a great deal. Somewhere in things I have  
18 been provided -- I seem to have gotten that impression  
19 from their testimony.

20 Q. You referred to Dr. Harlan's report and his  
21 testimony.

22 Dr. Harlan testified at page 1660 of the  
23 transcript that bleeding would have occurred at the  
24 time of the stabbing -- do you have that page in front  
25 of you?

1 A. Yes.

2 Q. He said that this blood, in fact the blood was  
3 found in the chest cavity?

4 A. Yes.

5 Q. In fact, essentially what these wounds did when he  
6 created the wounds, created channels, so to speak, in  
7 layman's terms, in the heart area, chest cavity?

8 A. Ultimately, yes. Not all the stab wounds made a  
9 channel like that. But the ones that went in the lung,  
10 stabbed around the heart and chest space.

11 Q. After the wounds would have been inflicted  
12 creating those channels into the the chest cavity,  
13 that would begin to immediately fill up with blood,  
14 correct?

15 A. Yes.

16 Q. In fact all this blood would not be spewing  
17 everywhere, there would be a substantial amount of blood  
18 as indicated from the testimony that went into the chest  
19 cavity area?

20 A. Yes. Ultimately during the whole course of the  
21 dying process and even after he was dead some would  
22 accumulate in there just by virtue of gravity.

23 Q. You have also testified in your opinion that this  
24 defendant at all times relating to this stabbing was  
25 fully face up?

1       A.       In my opinion, yes, based upon the evidence that  
2       was at the scene, photographs, yes.

3       Q.       You are aware the co-defendant testified that is  
4       inconsistent with that?

5       A.       Yes.

6       Q.       You testified about that. Were you also aware  
7       that the police officer who arrived at this scene and  
8       indicated in page 1307 of the transcript of the trial  
9       that that police officer testified that when he arrived  
10      the firemen were there and the firemen had stated to him  
11      that they found the deceased actually lying on his  
12      stomach and they rolled him over?

13      A.       No, I never seen that.

14      Q.       So, in fact -- because that is the basic  
15      assumption of your conclusions here, that this blood  
16      would be pushing out of the heart, there is some evidence  
17      that he had been face down?

18               MR. MACLEAN: I object. That is pure  
19      hearsay. There is no evidence to that effect at all.

20               MR. BAKER: I will rephrase that question.

21               THE COURT: There is testimony at the  
22      trial.

23               MR. BAKER: Yes, there is testimony at  
24      trial that the firemen found the deceased lying on his  
25      stomach and rolled him over.



1                   MR. MACLEAN: There was testimony at the  
2 trial that someone else said something. That testimony  
3 was hearsay.

4                   MR. BAKER: It is in the record and part  
5 of the record.

6                   THE COURT: Was there an objection  
7 interposed and stricken by the court?

8                   MR. MACLEAN: No, Your Honor.

9                   THE COURT: That helps me.

10                  MR. BAKER: Me, too, Your Honor.

11                  THE COURT: Go ahead.

12 Q.           So, in fact, there is evidence that this deceased  
13 was face down, correct, if the record plays that out?  
14 That is evidence you didn't consider?

15 A.           No, there is evidence that someone said to  
16 someone else that this perhaps may have happened.

17                         The problem I have, looking at the  
18 photographs, there is nothing on him that has the  
19 appearance he was face down during the course of all this  
20 bleeding. That is the problem.

21 Q.           In part you base that on your finding that there  
22 was no blood on the nose area, is that correct?

23 A.           No. No. It's the spray pattern and the  
24 saturation pattern on his shirt. It is a white T-shirt.  
25 It is very easy to see that all the blood around the

1 holes on the T-shirt has come out of those wounds and  
2 then seeped or soaked into the material.

3 MR. BAKER: If I may approach the witness.

4 I will mark them Exhibit 1 and 2.

5 THE COURT: All right.

6 Q. I will hand you two photos from the trial, one is  
7 the Defendant Exhibit 2 and Exhibit 3 C from the trial.  
8 Defendant Exhibit 1 is Exhibit 4 from the trial.

9 THE COURT: Exhibit 1 is the number --

10 MR. BAKER: I need to see it. Three C  
11 from the trial is Defendant's Exhibit 2.

12 THE COURT: Which one was one.

13 MR. BAKER: One is the trial Exhibit 4.

14 THE COURT: Thank you.

15 Q. If you look first at Defendant's Exhibit 1, which  
16 is the one labeled four from the trial?

17 A. Yes.

18 Q. That picture is basically a facial view of the  
19 deceased?

20 A. Yes.

21 Q. It indicates there is actually blood from the  
22 nose, substantial amount, correct?

23 A. Yes, bloody foam coming out of the right nostril.  
24 It is somewhat crusted with blood and foam coming out of  
25 the nostril itself, and blood on the duct tape.

1 Q. There is no blood seen on the tip of the nose,  
2 correct?

3 A. Right.

4 Q. If in fact this deceased had been lying face down,  
5 it appears he would be lying on what looks like a rug or  
6 piece of carpet, correct?

7 A. Yes.

8 Q. That may in fact explain why there is no blood on  
9 the tip of his nose?

10 A. No. He was face down, blood would be running out  
11 immediately below him. In this position on his back the  
12 blood is coming out of the nostril and going downward.  
13 It is not going upward on the nose.

14 If he was face down the blood would be  
15 coming out down immediately below him. I would expect  
16 blood all over the tip of the nose.

17 Q. If he is lying on the floor with the tip of his  
18 nose covered by the floor, would it not be more difficult  
19 to get on the floor?

20 A. No. The carpet is like a sponge.

21 Wet a sponge with water and try to lay  
22 down on it with your nose and keep your nose from getting  
23 wet. It doesn't work.

24 Q. So, some point after the stabbing he is now on his  
25 face as opposed to his back and you're saying that the

1       foaming on this would have occurred not at the initial  
2       time of the stabbing but sometime later, correct?

3       A.       No, sir. As the lung is hit with the stab wounds,  
4       blood from the injured lung tissue is going to drain  
5       into and be pushed through into the airways which contain  
6       air.

7                       The beating mechanism of creating moving  
8       air back and forth mixed the blood and air together to  
9       make the bloody foam. The foam is above that stabbing  
10      injury involving the lung. It took place while the man  
11      was alive.

12                     As someone is on their back when they are  
13      dead, air will work its way to the top. The foam very  
14      characteristically will continue to work out slowly from  
15      the nose as the bubbles work up to the surface out of the  
16      airway.

17      Q.       You are testifying in fact blood would start  
18      coming out of the nose rather quickly after the  
19      stabbing?

20      A.       As he is breathing, yes. As the stab wounds hit  
21      the lung the blood is being pushed into the airways and  
22      the mechanism of the breathing is going to move the  
23      blood upward and mix it with air and make the foam that  
24      we see and also some blood itself is going to come out as  
25      well.

1 Q. So, you would expect to see blood coming out from  
2 the nose?

3 A. To an extent, yes. This will continue after he is  
4 dead even.

5 Q. Looking at the same exhibit, there is again a  
6 substantial amount of blood in the face area?

7 A. Yes. Yes. It is all draining downward.

8 Q. Directing your attention to Defendant's Exhibit 2,  
9 which is three C from the trial, that is basically an  
10 overview of the deceased body?

11 A. Yes.

12 Q. It shows his shirt?

13 A. Yes. Down to the head and down to the mid abdomen  
14 area.

15 Q. In regard to that T-shirt, if you look at the  
16 blood stain most of that is confined to the upper left  
17 shoulder of the body, correct?

18 A. Yes. Upper front, mid shoulder and mid left  
19 front.

20 Q. The remaining portion of the shirt actually looks  
21 -- there is no sign of blood?

22 A. Yes. At least from the limitations of the  
23 photograph, it appears to be clean.

24 Q. Isn't it true, Dr. Sperry, that it is your opinion  
25 that you would basically have expected to find on the

1 clothing that would have been worn by the person  
2 committing the stabbings droplets or spattering?

3 A. Yes. Some smears but droplets and splatters.

4 Q. You would not expect to find a significant amount  
5 of blood stain?

6 A. Unfortunately how does one define significant?

7 Q. That is a vague term. You would find little  
8 droplets or spatters?

9 A. Yes. Clustered around the sleeve area of whatever  
10 hand was holding the knife.

11 Q. I believe you have in front of you reviewed the  
12 testimony again of Harold Devalle Miller, page 1472.

13 He basically described the petitioner in  
14 this case and he says after the stabbing of the victim,  
15 he backed up off the victim a couple feet and just stood  
16 and you know the guy started going into convulsions.

17 Looking at that statement. The defendant  
18 says the petitioner backed off from the body?

19 A. Yes.

20 Q. That could minimize the amount of blood that would  
21 get on the clothing, correct, if you back away from where  
22 it is coming from the victim?

23 A. Yes. Once he backs away then the fact he backs  
24 away the less likely there is going to be blood  
25 transferred, yes.

1 Q. Of course, you do not know if in fact he was  
2 wearing this coat, or the person that committed the  
3 stabbing was wearing the coat at the time the stabbing  
4 occurred, do you?

5 A. I have no independent knowledge of that, no.

6 Q. Dr. Sperry, correct me if I am wrong. You first  
7 became involved in this case in 1997?

8 A. Yes.

9 Q. So, obviously you did not visit the crime scene or  
10 talk to witnesses or anybody at or near the time of the  
11 crime?

12 A. Of course not, no.

13 Q. And you also agree that forensic analysis is most  
14 likely -- accuracy of forensic analysis will improve if  
15 you can do those things, visit the crime scene and talk  
16 to witnesses shortly after the crime?

17 A. As a general concept that will optimize things,  
18 yes.

19 Q. Have you talked to any police officers involved in  
20 this case in preparing for your opinion here?

21 A. No, I have not.

22 Q. Did you talk to the serologist who performed the  
23 the blood testing in this case?

24 A. No.

25 Q. You testified basically your opinions are drawn

1 from her notes as to what they did, correct?

2 A. Yes.

3 Q. You actually have not talked to her?

4 A. No, I have not spoken to her.

5 Q. Have you talked to Dr. Charles Harlan who was the  
6 pathologist who actually did the examination of the body  
7 and was at the crime scene?

8 A. No.

9 Q. Did you talk to any of the prosecutors that  
10 prosecuted the case?

11 A. No.

12 Q. Who have you talked to in preparing for your  
13 conclusions?

14 A. Really the only people I have spoken with are the  
15 attorneys representing the plaintiff in this case and you  
16 called me a couple days ago, is that right?

17 Q. That's right.

18 A. Good.

19 Q. Dr. Harlan, have you reviewed --

20 A. I am Sperry.

21 Q. Excuse me, Dr. Sperry.

22 Have you reviewed the testimony of the  
23 petitioner in this case from the trial?

24 A. No. No, I have not.

25 Q. You were not aware that in that testimony he



1       stated he committed the stabbings?

2       A.       No, I am not aware of that.

3       Q.       You talked to the petitioner in this case about  
4       the crime?

5       A.       No, I never have.

6                       MR. BAKER:  No further questions, Your  
7       Honor.

8                       THE COURT:  I have a couple questions.

9       A.       Yes, sir.

10                      THE COURT:  Have you examined the coat?

11      A.       No, I have not.

12                      THE COURT:  Examined the pants?

13      A.       No, I have not.

14                      THE COURT:  Do you know where the coat  
15      is?

16      A.       No.

17                      THE COURT:  Do you know where the pants  
18      are?

19      A.       No.

20                      THE COURT:  Anybody want to follow-up?

21                      MR. MACLEAN:  No.

22                      THE COURT:  Okay.  Going once, twice.

23                      All right.  You may step down.  Thank you.  
24      Sorry to have kept you waiting today.

25      A.       No problem.  I am used to it.

1 THE COURT: You are the gentleman that has  
2 the four o'clock reservation?

3 A. Yes.

4 THE COURT: You are in good shape.

5 MR. MACLEAN: Your Honor, I have not made  
6 arrangements for transportation to the airport. It just  
7 occurred to me, I would like to be excused to call my  
8 office.

9 THE COURT: Mr. Baker would have the next  
10 witness. He probably needs a moment to gather his  
11 thoughts.

12 MR. BAKER: If I could offer -- I don't  
13 recall if I moved them in evidence. If I didn't, I would  
14 like to at this time.

15 THE COURT: Exhibit 1 and 2 are admitted.  
16 Those are the trial exhibits four and three C.

17 MR. MACLEAN: So there is no confusion, I  
18 move to admit all the exhibits I identified during the  
19 course.

20 THE COURT: They are all admitted except  
21 24, which is the report. I have handed Ms. Bush the ones  
22 I made unfortunate marks on. I will ask the lawyers to  
23 look at them. There are no conclusions of law or legal  
24 points or factual observations except I am circling what  
25 you drew my attention to.

1 I hesitate to give anybody advice about  
2 transportation anywhere. There is a hotel that usually  
3 has taxi cabs lined up.

4 We will take a brief break and come back  
5 and hear our next witness

6 (Whereupon, the Court was in recess.)

7 THE COURT: Are we ready to proceed?

8 MR. MACLEAN: I think we are ready, Your  
9 Honor.

10 THE COURT: Mr. Baker, your turn.

11 MR. BAKER: The respondent calls Dr.  
12 Craddock.

13 THE COURT: Raise your right hand, sir.

14 (Whereupon, the witness was duly sworn.)  
15  
16  
17  
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25

## EXAMINATION OF SAMMUAL CRADDOCK

BY MR. BAKER:

Q. Dr. Craddock, please state your full name for the record, please.

A. Sammual Craddock.

Q. Dr. Craddock, are you residing in Nashville?

A. Yes.

Q. You are currently employed with the Middle Tennessee Mental Health Institute?

A. That's correct.

Q. That is a state hospital, correct?

A. Yes.

Q. Please tell us what your duties are there and what your position is.

A. Since 1986 I have been employed as a forensic psychologist to assist with the evaluation team in doing the assessments of individuals that have been court ordered to us to determine if there might be a basis for an insanity defense, whether the individual is capable of standing trial and whether they are committable or in danger to themselves and others and need hospitalization.

Q. Have you been doing that since 1986?

A. Correct.

Q. Can you tell us what degrees you currently hold.

1       A.       I have a bachelor, master's and doctorate in  
2       psychology from Louisiana State University.

3       Q.       Are you also a member of any professional  
4       organizations related to your work in psychology?

5       A.       Yes, I am.

6       Q.       Please tell us what those are.

7       A.       American Psychological Association, the Society of  
8       Psychology and the Law, Division of Neuropsychology,  
9       Nashville Area Psychological Association, Tennessee  
10      Psychological Association, Scientific Research Society.

11      Q.       What types of certifications do you have in the  
12      field?

13      A.       I am presently licensed to practice in the State  
14      of Tennessee and prior to that from 19 -- I graduated in  
15      1973 and moved to Tennessee. I was licensed to practice  
16      in -- wasn't licensed to practice in Tennessee until I  
17      moved to Tennessee.

18      Q.       How long have you been in the field of forensic  
19      psychology?

20      A.       Since 1986.

21      Q.       Prior to that time, what type practice did you  
22      have?

23      A.       I initially did clinical assessments for the  
24      department of mental health and mental retardation for  
25      the county of Lebanon in Pennsylvania and then I moved

1       into an administrative position and became administrator  
2       for mental health and mental retardation until 1985.

3       Q.       Have you testified in other cases as a forensic  
4       psychologist before?

5       A.       Yes, I have.

6       Q.       Roughly about how many times would you say you  
7       testified as a forensic psychologist?

8       A.       It is roughly twice a month since about 1987.  
9       1986 I did mostly assessments and then it takes about six  
10      months before the trials begin.

11                   MR. BAKER:  At this time we would offer  
12      Dr. Craddock as an expert in the field of forensic  
13      psychology.

14                   THE COURT:  All right.  He may testify as  
15      an expert.

16      Q.       Dr. Craddock, do you know the petitioner in this  
17      case?

18      A.       Yes, I do.

19      Q.       How do you know him?

20      A.       The gentleman named James Jones who I now  
21      understand to be Mr. Rahman was sent to us by court  
22      order and he came to our facility January 30, 19 --  
23      excuse me -- January 20, 1987 and stayed until February  
24      23, 1987.

25                   During that time I was part of the

1 evaluation team that assessed him.

2 Q. This was at the the Middle Tennessee Mental Health  
3 Institute?

4 A. Yes, in the forensic services.

5 Q. This was an in-resident evaluation?

6 A. Yes. He was sent there to be observed for 24  
7 hours a day.

8 Q. I direct your attention to the evaluation of the  
9 petitioner in this case.

10 First with regard to any evaluation of his  
11 memory, did you see anything in your evaluation that  
12 indicated that there was a lack of ability to or any  
13 defect in his memory?

14 A. I did not see such. The student interns that  
15 assessed him did not notice deficits in his memory.

16 When I asked Mr. Jones about his memory,  
17 he did not claim to have a memory impairment.

18 Q. How about Mr. Jones' ability to reason. Did you  
19 find anything in the evaluation that indicated he may  
20 have had an impairment in his ability to reason?

21 A. The question of reasoning and judgment in respect  
22 that he proposed a need to rid the neighborhood of drugs,  
23 I could not really appreciate his reasoning that that  
24 was the view motivation for his actions in the  
25 neighborhood.

1                   But generally speaking, as far as testing  
2 goes, there was not a problem with reasoning on the  
3 psychological tests.

4       Q.       As far as any mental impairment to inhibit his  
5 ability to reason?

6       A.       We did not see any. At least by interviewing him  
7 and by the test results.

8       Q.       Did the evaluation indicate that he was psychotic?

9                   Maybe first you need to tell us what  
10 psychotic is.

11       A.       It would be out of touch with reality, that the  
12 person is making gross misperceptions what is going on  
13 around him.

14                   No, we didn't feel he was psychotic.

15       Q.       Did the evaluation reveal whether or not he was  
16 delusional?

17       A.       Explain what delusional would mean?

18       A.       Delusional individual would have beliefs far  
19 beyond what would exist in reality. Even though they may  
20 be in contact with reality, they may have the perception  
21 that they can accomplish things or know things that are  
22 impossible to know.

23                   And the issue arose with Mr. Jones that he  
24 was comparing himself to individuals such as Moses,  
25 Abraham, Martin Luther King and that he felt though he



1 might be able to accomplish things for his neighborhood  
2 and stand out as a prominent individual.

3 Q. Did you view this as delusional?

4 A. We wondered that when we initially heard that. We  
5 wondered if he was grandiose and delusional.

6 As the evaluation proceeded, we came to  
7 the conclusion that, no, this was not delusional.

8 From his description of different things  
9 that went on, we just didn't feel he was out of touch  
10 with reality or delusional.

11 Q. In the evaluation did he ever claim to hear voices  
12 or anything like that?

13 A. To my knowledge he did not. I don't recall seeing  
14 it in notes that he was hallucinating.

15 He did mention that around the time of the  
16 incident that he had been consuming marijuana and he felt  
17 as though he had seen angles that was telling him it was  
18 the right thing to do.

19 But this was not while he was with us.  
20 This was what he was describing, something that he  
21 experienced at the time of the incident.

22 Q. In regard to his intelligence level, was any  
23 testing of intelligence performed?

24 A. He was given a Wechsler Adult Intelligence  
25 Test. His intellect falls within the average range of

1 function.

2 Q. What about any tests for any neurological type  
3 impairment, any tests conducted?

4 A. He was given a brief screen test and it was  
5 negative as well as he was given an EEG, a medical test,  
6 electroencephalogram and a skull x-ray. They were  
7 negative as well.

8 Q. Was he given the Bender Motor Gestalt Test?

9 A. Yes. That was the screening that was negative.  
10 It was a screening where --

11 THE COURT: I am sorry. What were you  
12 testing for on the last two?

13 MR. BAKER: Any neurological impairment.

14 THE COURT: All right. Go ahead.

15 Q. Was any personality type tests perform?

16 A. Yes. He was given the MMPI personality  
17 questionnaire.

18 Q. Will you please explain the results of that  
19 testing.

20 A. They were inconclusive in that we didn't think the  
21 results represented the functioning or what we observed  
22 of his behavior and comments while at our facility.

23 The results would suggest possibility of  
24 a number of things. One would be severe psychopathology,  
25 someone that would be out of touch with reality, a

1     paranoid schizophrenic. We did not see that.

2                     We saw somebody that had paranoid beliefs.

3                     Another explanation for elevated scales on  
4     the MMPI is having idiosyncratic or unique ideas on how  
5     to answer the questions as well as his present  
6     circumstances that he was in in being incarcerated.

7                     As you look at some of the answers he  
8     gave, you can see how his answers to some of the  
9     questions would contribute to a high score.

10                    Another possible explanation would be  
11    malingered or trying to present himself in a devious  
12    fashion.

13                    I did not interrupt the MMPI results that  
14    way simply because Mr. Jones throughout his evaluation  
15    period did not propose he was mentally ill or tried to  
16    present himself as such.

17                    When we asked him if he was mentally ill,  
18    he said I didn't think so.

19                    Although he has problems communicating  
20    with others, he feels like he is misunderstood, is the  
21    way he described the mental illness.

22    Q.            There is no actual psychological test to determine  
23    exactly why an F score is what it is?

24    A.            On the MMPI there is not a good way. There is an  
25    MMPI two and other scales that have been developed like

1 for inconsistent responding that help out.

2 Q. With regard to his testing here in this case with  
3 the MMPI, do you have an opinion as to why his F score  
4 might have been high?

5 A. Yes. It is my opinion he just perceived the  
6 questions in a unique or idiosyncratic way and also  
7 according to is situation.

8 For instance, he responded to such things  
9 as I believe I am being plotted against, I feel I have  
10 been punished without cause. I am sure that I am getting  
11 a raw deal from life. I hear strange things when I am  
12 alone.

13 All these things would not be  
14 exaggerations what he felt when he was perceiving at the  
15 time having serious legal charges against him, being  
16 incarcerated, when he understood that the two other  
17 defendants had not been apprehended. So, he felt like he  
18 was unjustly being treated.

19 Q. So the MMPI results were invalid?

20 A. I would say invalid, inconclusive. Somebody might  
21 want to make a different interpretation.

22 Q. When you say invalid, what does that mean?

23 A. That means they contribute nothing to really  
24 giving a good diagnostic picture of him.

25 Q. With regard to the petitioner's past history it is

1 my understanding you had a record from Saint Elizabeth  
2 Hospital?

3 A. Yes.

4 Q. And also that the petitioner had been interviewed  
5 about his past history?

6 A. Yes.

7 Q. You did not actually have any other documents such  
8 as his prison records or other reports or documents of  
9 his past history, is that correct?

10 A. Saint Elizabeth report is the only one we  
11 received. We sent off for the other ones. I think in  
12 mid-March after he left, February 23, we received a note  
13 from the Department of Prisons saying we would have to  
14 have him notarize a federal form to get the records. Of  
15 course, he was no longer available to us.

16 Q. Basically when you look at a patient's past  
17 history and documents of his past history, how does that  
18 factor into a present evaluation?

19 A. It can be very important depending upon what the  
20 question is that is being asked. If it is to determine  
21 one competent to stand trial, that is typically based  
22 upon a person's present mental functioning as they are  
23 today.

24 So, we might use very little information  
25 on somebody's history to answer that question to

1 determine one's level of intellect. It might be  
2 important whether they have had some severe head injuries  
3 or not. We would want to know their level of intellect.  
4 That might be important in Mr. Jones' case.

5 He did not report a history of head  
6 injuries to us or seizures. He mentioned, I think at  
7 Saint Elizabeth he was knocked unconscious once without  
8 repercussions.

9 It varies upon the questioning being  
10 asked, how important the history is. With us, we like to  
11 have a good thorough history.

12 We were able to interview his wife and  
13 obtain some information from her.

14 However, it is our impression that  
15 essentially all the information she gave us was what she  
16 gathered from Mr. Jones.

17 Q. With regard to prior reports of psychiatric or  
18 psychological reports, how would those -- how would those  
19 factor into a mental evaluation?

20 A. What we had from Saint Elizabeth psychological was  
21 before he leaves -- he was diagnosed as not mentally ill.  
22 There we had some indication that he had been seen --  
23 although this was back in 1969 -- that mental illness was  
24 not noted then.

25 We heard Mr. Jones say he had received two

1 antipsychotic medications. We were curious about that.  
2 I don't know if he was diagnosed psychotic. It would be  
3 important for us to know that. We didn't obtain that  
4 information.

5 Q. With a present mental evaluation to make a  
6 diagnosis to form opinions, do you need to see that in  
7 the person or can you rely on prior records to make a  
8 diagnosis?

9 A. I think a good diagnosis -- and myself, I need to  
10 see the signs of symptoms to give that diagnosis. If  
11 there is a history of perhaps a person having a mental  
12 illness and it seems to come from a reliable source,  
13 often we will write down what the mental illness is and  
14 put down by history. That means it is provisional or  
15 conditional.

16 Q. In this particular case did you -- was there any  
17 diagnosis of a mental illness or disorder?

18 A. We did not give a diagnosis and we did not have  
19 information of him having a prior diagnosis.

20 Q. Other than the Saint Elizabeth report which you  
21 indicate did not diagnose --

22 A. There was no written reports given us. We had Mr.  
23 Jones, what he said to us.

24 Q. Now, were any diagnoses considered in the your  
25 evaluation?

1       A.       We considered the diagnosis of the delusional  
2       difficulties but that was early in the evaluation.

3               Like I say, the evaluation proceeded, we  
4       were less impressed with him being delusional.

5               For instance, he said that he was  
6       attending the -- I think the American Baptist College.  
7       He wanted to become a minister. He identified himself  
8       with say people like Martin Luther King.

9               However, he also wanted to, I think, have  
10      a diet as a Muslim would have and which we provided him.  
11      I noted in the report that he brought a Bible in the  
12      facility with him. It made me really wonder what kind of  
13      religious commitment he had.

14              I think he also compared himself to Gandhi  
15      in being a pacifist but made the comment to Dr. Marshall  
16      that people should be able to have guns in case the  
17      government becomes too powerful.

18              Those aren't the words he used but to that  
19      effect.

20      Q.       But ultimately there was no diagnosis?

21      A.       Ultimately there was no diagnosis.

22      Q.       That was based upon the progress of the evaluation  
23      as progressed through, is that correct?

24      A.       As our observations, yes. Not only our personal  
25      observations but the nurses and technicians that



1 accumulated it during the period he was with us.

2 Q. He was ultimately found competent to stand trial?

3 A. That's correct.

4 Q. Did the evaluation reveal anything that would  
5 indicate he did not have the mental capacity to  
6 premeditate or deliberate a murder at the time of the  
7 offenses at issue in this case?

8 A. We did not assess his ability to premeditate or  
9 deliberate.

10 I could give my personal opinion, is that  
11 I did not see something that would have prohibited him  
12 from being able to do that or having that capacity.

13 Q. Ultimately the evaluation concluded that he was  
14 sane, correct?

15 A. That we could not support an insanity defense.

16 Q. With regard to the offenses, petitioner offenses  
17 in this case, was that discussed with him during the  
18 evaluation?

19 A. Yes, it was.

20 Q. Do you recall what statements he made about the  
21 offenses?

22 A. I wrote them down, some of them.

23 Q. Please tell us what you recall about those  
24 statements?

25 A. January 20th before Mr. Jones was admitted, he

1 told us about seeing young kids receiving and selling  
2 drugs in the neighborhood and he believed in God and  
3 ended up approaching the two victims, and he said I had a  
4 shotgun to scare the guy selling drugs.

5 Mr. Jones understood that the one  
6 individual was killed with a knife and that the victim  
7 had cocaine in him, in his urine.

8 He said he was accused of taking \$300 from  
9 the victim.

10 He said the only thing I had in me was pot  
11 on the day of the incident, it was about three joints. I  
12 don't drink at any time. I am a deeply involved person.  
13 I remember very well how it all happened.

14 He said if he was out of control during  
15 the incident, he wasn't aware of it. He was comparing  
16 himself to the guardian angels.

17 Then on February 19 and 20, he said that  
18 the person that went with him to tie up the individuals  
19 got -- his word was unsettled and so Mr. Jones gave the  
20 other individual the gun and Mr. Jones tied up the  
21 victims with the duct tape and told them to stop dealing  
22 drugs to kids, your house is being watched, quote  
23 unquote.

24 And again he said he was high on  
25 marijuana.

1                   That he left the house and then he  
2       went to the other fellow's house who was the accomplice  
3       and third guy who he said was involved left in a car  
4       later.

5       Q.       Do you recall what else he said in regard to this  
6       third guy?

7                   Did he mention anything about painting on  
8       the walls?

9       A.       Well, that was the objective. First Mr. Jones and  
10      the fellow that accompanied him were going to go in and  
11      tie them up and the third individual would come in and  
12      spray paint the walls saying this is a drug house and  
13      stop that kind of activity.

14      Q.       Did he ever indicate whether or not he remembered  
15      the events of the crime to you?

16      A.       Well, essentially what he said, as I mentioned  
17      earlier, quote, unquote, I remember very well how all it  
18      happened.

19      Q.       What date did he make that statement?

20      A.       January 20, 1987.

21      Q.       Now, at a later time did he ever state that -- at  
22      a later time did he state I didn't know if I killed him  
23      or not?

24      A.       He made that statement to Dr. Marshall. I think  
25      that was on February 11th.

1 Q. After that did he make any statements?

2 THE COURT: I am sorry. Will you repeat  
3 that question. I didn't hear it.

4 Q. Now, at a later date, February 11, 1987, the  
5 petitioner had made a statement to Dr. Marshall that I  
6 don't know if I kill him or not, is that correct.

7 THE COURT: What was the question just  
8 prior to that, Mr. Baker?

9 MR. BAKER: I asked him whether the  
10 petitioner made any statements regarding his memory of  
11 the events of the crime and the doctor responded, he  
12 said, quote, I remember very well how it all happened.

13 THE COURT: All right. That is what I  
14 heard.

15 Q. The next question, if he made subsequent  
16 statements after that one. It was February 11?

17 A. Yes. When asked about killing the alleged victims  
18 he said, referring to Mr. Jones, I don't know if I killed  
19 him or not.

20 Q. After that February 11th statement, did he make  
21 any other statements to you about this crime?

22 A. And to the rest of the evaluation team saying that  
23 he did not assault either individuals, that he left  
24 before the assaults occurred.

25 Q. And on that meeting on January 20th it stated he

1 remembered very well how it all happened?

2 A. On January 20, yes.

3 THE COURT: When did he say he left before  
4 the assaults occurred?

5 We have three different statements here.  
6 Be specific.

7 Q. When did he first state he left before the  
8 assaults occurred?

9 A. That would have been on January 20, the day  
10 after -- day of admission.

11 Q. On that day is when he told you he remembered very  
12 well how all it happened?

13 A. Correct.

14 Q. I will ask about post traumatic stress disorder.

15 Did you see anything that he was suffering  
16 from that disorder?

17 A. I did not.

18 MR. BAKER: No further questions, Your  
19 Honor.

20 MR. MACLEAN: Your Honor, I have a  
21 collective exhibit I would like to -- I have an extra set  
22 here.

23 THE COURT: That is not necessary.

24 MR. MACLEAN: I will give them to you.

25 May I approach the bench, Your Honor?

1 THE COURT: Yes.

2 MR. MACLEAN: I have got one I premarked.  
3 I will give this to the clerk and give this extra copy to  
4 Your Honor.

5 THE COURT: All right.

6 Mr. Baker, you introduced no evidence, is  
7 that right.

8 MR. BAKER: That's correct, Your Honor.  
9 The records are in the post conviction file. I am trying  
10 to minimize it if possible.

11 THE COURT: Okay.

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## EXAMINATION OF SAMMUAL CRADDOCK

BY MR. MACLEAN:

Q. Dr. Craddock, just one thing I learned during your testimony that I didn't know before.

You testified that you began as a forensic psychologist in 1986. Is that correct?

A. Correct.

Q. Before that you had an administrative job, correct?

A. Yes.

Q. And the evaluation that this case occurred in was January and February of 1987?

A. That's correct.

Q. So that would be within a year after you began working as a forensic psychologist, is that correct?

A. Correct.

Q. Now, I want you to look at the first exhibit here which is Exhibit Number 80.

MR. MACLEAN: Your Honor, I numbered it Exhibit Number 80 because that is going to be included in our binder of exhibits.

THE COURT: All right.

Q. This is a motion to supplement state's proof filed in the state post conviction proceeding. Attached to that is an affidavit of Cheryl Blackburn.

1 Dr. Craddock, you know who Cheryl  
2 Blackburn is?

3 A. I do.

4 Q. At the time in 1993 she was with the D.A.'s  
5 office, correct?

6 A. Correct.

7 Q. I think she already said she was one of the  
8 prosecutors involved in this case back when it was tried  
9 in 1987, correct?

10 You may not know that but the record  
11 reflects that.

12 A. All right.

13 Q. Dr. Craddock, you worked with Cheryl Blackburn in  
14 the past, haven't you?

15 A. I have.

16 Q. This affidavit and this motion says that -- I will  
17 read from the motion. I think the third sentence, fourth  
18 sentence of the affidavit of Cheryl Blackburn, avers that  
19 Dr. Sam Craddock of the Middle Tennessee Mental Health  
20 Institute was present and available to testify in  
21 rebuttal in event that the defense offered any testimony  
22 regarding mental condition or defects.

23 Now, Dr. Craddock, were you aware at the  
24 time this affidavit was filed in the post conviction  
25 proceeding it was being filed?



1 A. No.

2 Q. And in fact you don't have any specific memory of  
3 talking to Cheryl Blackburn or anyone else with the  
4 prosecution about this case back in 1987, when it was  
5 tried, do you?

6 A. I saw notes I prepared to go to trial. I don't  
7 recall being -- going down to the courthouse or  
8 testifying.

9 Q. Would you look at the next exhibit which is  
10 Exhibit Number 30.

11 Now, Exhibit 30 is a letter from MTMHI  
12 files. I am referring to the Tennessee -- Middle  
13 Tennessee Mental Health Institute where you work?

14 A. Correct.

15 Q. This Exhibit 30 is a letter from MTMHI files sent  
16 to Neal McAlpin, defense attorney for James Jones at the  
17 time. That comes from MTMHI files?

18 A. Yes.

19 Q. This is a form letter the MTMHI sent to him when  
20 MTMHI is about to take an evaluation of the defendant  
21 represented by counsel?

22 A. Correct.

23 Q. A letter goes to the prosecuting attorney and  
24 defense attorney, correct?

25 A. Yes.

1 Q. This letter requests the attorney to supply  
2 information to MTMHI that it might be helpful and useful  
3 for the defendant?

4 A. Correct.

5 Q. Will you look at the next exhibit which is Exhibit  
6 Number 31.

7 Exhibit 31 is also from the files of  
8 MTMHI, is that correct?

9 A. That's correct.

10 Q. This is a letter which Neal McAlpin sent MTMHI in  
11 response to the letter that Mr. Southard sent to him  
12 requesting information, isn't that right?

13 A. I don't know if it is in response or not. I don't  
14 know about what prompted this other than maybe Mr. Jones  
15 request for a special diet.

16 Q. That is what it is, a request for a special diet,  
17 right?

18 A. Correct.

19 Q. It doesn't contain information about Mr. Jones'  
20 background or his possible problems?

21 A. That's right.

22 Q. There is no other written correspondence from  
23 defense counsel in MTMHI files relating to Mr. Jones, is  
24 there?

25 A. Correct.

1 Q. So as far as you know this was the only possible  
2 response that MTMHI received in response to the letter  
3 that Mr. Southard sent out for information from defense  
4 counsel?

5 A. Correct.

6 Q. Now, will you look at the next exhibit, Exhibit  
7 34.

8 In his a letter dated February 10, 1987  
9 addressed to Larry Southard, director of forensic  
10 services from Mr. Zimmermann -- the District Attorney who  
11 prosecuted the case, correct?

12 A. Correct.

13 Q. This letter was apparently in response to Mr.  
14 Southard's request for information?

15 A. Correct.

16 Q. So the prosecution responded with its own version  
17 of what happened and its information that it wanted MTMHI  
18 to see, but apparently from the the files the defense  
19 counsel did not respond in that fashion, correct?

20 A. I agree, yes.

21 Q. Now, Dr. Craddock, you testified and as I wrote  
22 down the language you used -- I believe I am correct --  
23 that in your conclusion you said the insanity defense  
24 could not be supported.

25 That was your conclusion, correct?

1 A. Correct.

2 Q. Isn't it true that people that MTMHI see, when  
3 they look at a patient with regard to a possible insanity  
4 defense begin with the presumption that the defendant was  
5 sane?

6 Is that correct?

7 A. That's right.

8 Q. You understand the law in Tennessee that if an  
9 issue of insanity is properly raised the presumption goes  
10 away and the burden of proof shifts to the state to prove  
11 sanity beyond a reasonable doubt.

12 Do you understand that?

13 A. It was before 1995, 1993 -- '95, yes.

14 Q. Now, Dr. Craddock, I believe you testified a  
15 social history is important to a psychological  
16 evaluation?

17 A. Correct.

18 Q. It is an important element of a psychological  
19 evaluation, isn't it?

20 A. Yes.

21 Q. Ms. Rebecca Smith is a person at the time of the  
22 evaluation in this case in early 1987 -- and she is still  
23 employed at MTMHI, correct?

24 A. Yes.

25 Q. In the forensic services division?

1 A. Correct.

2 Q. She is a psychiatric social worker, is that right?

3 A. That's right.

4 Q. She was a psychiatric social worker back then?

5 A. Correct.

6 Q. One of her jobs as a psychiatric social worker is  
7 to make an effort to put together a social history that  
8 could be used by you and the others in connection with an  
9 evaluation, correct?

10 A. Yes.

11 Q. Now, would you please look at the the next  
12 exhibit.

13 MR. MACLEAN: Your Honor, from this point  
14 on they have not been premarked because I didn't know  
15 where we would be in exhibit numbers.

16 So, I will need some help on what number  
17 we are on right now.

18 THE COURT: Well, since we are taking them  
19 a bit out of order, I can't give you any guidance on  
20 that.

21 MR. MACLEAN: I will give you some  
22 guidance in just a moment. I apologize to the Court.

23 We show it to be Exhibit Number 124.

24 THE COURT: Social history will be 124?

25 MR. MACLEAN: Yes, sir.

1 THE COURT: All right.

2 Q. Will you look at the next document, Exhibit 124  
3 and that is called a social history.

4 Do you see that?

5 A. Yes, I do.

6 Q. This was a social history prepared by Rebecca  
7 Smith, correct?

8 A. Correct.

9 Q. You will see in the middle of the first page it  
10 says under informants, it says social history information  
11 on this patient was gathered from a telephone interview  
12 conducted with his wife, Susan Jones.

13 Then the next paragraph says, records have  
14 been requested from the following agencies and then it  
15 lists a number of agencies there, correct?

16 A. Correct.

17 Q. You just testified that you did not receive the  
18 documents from the various agencies that were requested,  
19 correct?

20 A. That's correct.

21 Q. Now, you mentioned a report from Saint Elizabeth  
22 Hospital that you did receive, correct?

23 A. Yes.

24 Q. And didn't you receive that from the prosecution?

25 A. No. We received it from Saint Elizabeth.

1 Q. A two-page report, correct?

2 A. Correct.

3 Q. And when you received that, you weren't aware that  
4 Abu-Ali had been at Saint Elizabeth Hospital for a number  
5 of months, were you?

6 A. Would you ask the question again.

7 Q. You weren't aware he had been at Saint Elizabeth  
8 Hospital back in 1970, I believe, or 1969 for several  
9 months?

10 A. We were not aware of it?

11 Q. Yes. Were you aware of it?

12 A. He mentioned it at his admission interview, he had  
13 been there.

14 Q. All right. But you were not aware he had been  
15 sent to Saint Elizabeth Hospital pursuant to a court  
16 order issued in connection with his 1969 arrest, were  
17 you?

18 A. You mean at any time throughout the evaluation  
19 period?

20 Q. No, at the time you received this document?

21 A. When we read the document it mentioned the  
22 circumstances under why he was sent there.

23 Q. Did it mention that the court ordered him to be  
24 evaluated because he was arrested and he was banging his  
25 head and he had a history of suicides attempts?

1 A. That is part of the contents of Saint Elizabeth's  
2 report.

3 Q. Were you aware after this report was issued by  
4 Saint Elizabeth Hospital in connection with the court  
5 order evaluation that the court subsequently entered  
6 another order for further evaluation of Abu-Ali?

7 A. At Saint Elizabeth?

8 Q. No, after the Saint Elizabeth stay, after he was  
9 released from Saint Elizabeth and then they issued their  
10 report and the court issued an order for further  
11 evaluation of Abu-Ali?

12 A. No, we weren't aware of that. I wasn't.

13 Q. You weren't aware as a result of that he was sent  
14 to Lewisburg for further evaluation?

15 A. That's correct. We were not aware.

16 Q. You were not aware, therefore, that the court did  
17 not rely upon the Saint Elizabeth evaluation in  
18 connection with that?

19 A. What court.

20 Q. The court that ordered the evaluation back in 1969  
21 and '70?

22 A. I am sorry. You will have to repeat that  
23 question.

24 Q. You don't know the circumstances surrounding that  
25 evaluation other than what is stated in the report



1     itself, do you?

2     A.     Of Saint Elizabeth, that is correct.

3     Q.     Now, as part of putting together a social history,  
4     you tried to obtain a history from family and  
5     institutions where the patient has been in the past?

6     A.     Typically, yes.

7     Q.     And when you evaluated Abu-Ali or James Jones, you  
8     didn't know whether he had been diagnosed with a mental  
9     illness in the past, did you?

10    A.     That's correct.

11    Q.     And you didn't know whether there was any evidence  
12    of mental illness in his family, did you?

13    A.     That's correct.

14    Q.     Do you recall meeting Abu-Ali?

15    A.     Yes.

16    Q.     Before you met him, you had been informed he had  
17    previously been convicted of second degree murder and  
18    that he was then being charged with first degree murder  
19    and that this was a possible death penalty case?

20    A.     Correct.

21    Q.     But you were surprised by his appearance and  
22    presentation, weren't you?

23    A.     Yes, I was.

24    Q.     You noted he was of slight build and he was quit  
25    and cooperative?

1 A. Correct, and polite, very well mannered.

2 Q. He did not present himself in a manner you would  
3 have expected from a defendant of this kind of record?

4 A. We were caught a little off guard, correct.

5 Q. Let's talk about the delusional thing.

6 When you interviewed Mr. Jones, you said  
7 he sounded like he could be delusional, didn't you?

8 A. Yes.

9 Q. In your interview of him he compared himself,  
10 as you said before, with figures such as Abraham and  
11 Gandhi and on a mission to change the world, is that  
12 correct?

13 A. That's correct.

14 Q. He explained the events surrounding the events in  
15 this case as an effort to cleanse the black neighborhoods  
16 of drugs?

17 A. Correct.

18 Q. And describing the offense he compared himself to  
19 the guardian angels, correct?

20 A. Correct.

21 Q. And members of the staff at MTMHI raised the  
22 question of whether Abu-Ali could be delusional?

23 A. Yes.

24 Q. While the staff did not reach the conclusion he  
25 was delusional, remarks in your report that his thinking

1 was not conventional, is that right?

2 A. Yes.

3 Q. You also remarked in your report that Abu-Ali's,  
4 quote, judgment and insight are poor if he believes his  
5 approach to ridding the neighborhood of drugs is a  
6 realistic one?

7 A. Correct.

8 Q. Although you did not consider his thoughts  
9 delusional, you would agree another clinician might  
10 differ with your opinion on that issue?

11 A. Correct.

12 Q. And delusional thinking is a sign of mental  
13 illness, isn't that correct?

14 A. Correct.

15 Q. Now, let's go into Rebecca Smith's interview of  
16 Susi.

17 We said before that Rebecca Smith  
18 indicated in that social history she did interview Susi  
19 Jones, who is Abu-Ali's wife, in a telephone interview,  
20 correct?

21 A. Correct.

22 Q. This kind of interview is normal in putting  
23 together a social history for evaluation?

24 A. Correct.

25 Q. And her description of Abu-Ali indicated that

1 Abu-Ali displayed some bizarre qualities?

2 A. Yes.

3 Q. In fact, isn't it true that Dr. Marshall reported  
4 about this in his dispositional staffing memo on this  
5 case?

6 A. He reported what Miss Smith stated during our  
7 conference.

8 Q. Let me read to you from this. See if you remember  
9 this.

10 Dr. Marshall reported as follows: Quote.  
11 History from the wife indicated that back as far as July,  
12 1985, he believed that Christ would enter a man and that  
13 could become a Messiah.

14 He also thought possibly he might be the  
15 Messiah, he believed he could communicate with the birds  
16 and felt all living things could communicate prior to the  
17 fall of man in the Garden of Eden. He felt he could  
18 communicate with a pack of wild dogs on the Indian  
19 reservation and talked about the lost book of Eden and a  
20 lot of other seemingly wild stuff.

21 That was Dr. Marshall's statement?

22 A. That sounds like an accurate portrayal of what he  
23 reported.

24 Q. You don't know whether what Mr. Jones was saying  
25 was accurate when she described those things of Miss

1 Smith, correct?

2 A. I am taking it at face value.

3 Q. You have no reason to believe Ms. Jones was  
4 fabricating this when she told these things to Ms.  
5 Smith?

6 A. I am accepting Ms. Smith's impression that Ms.  
7 Jones was a reliable informer.

8 Q. Miss Smith expressed her opinion that Ms. Jones  
9 was genuine when she reported these things to her?

10 A. Yes.

11 Q. She is the psychiatric social worker you rely upon  
12 in these matters, correct?

13 A. Correct.

14 Q. If James Jones practiced what he proposed to his  
15 wife, what Ms. Jones reported then, such behavior in your  
16 opinion would enhance the possibility that Mr. Jones was  
17 delusional, correct?

18 A. That's correct.

19 Q. Let's talk about the MMPI.

20 You mentioned before you did administer  
21 the MMPI test to Mr. Jones?

22 A. Correct.

23 Q. And that is a personality assessment test?

24 A. Or questionnaire.

25 Q. What did the letters MMPI stand for?

1 A. Minnesota Multi-phasic Personality Inventory.

2 Q. And this is a questionnaire or test intended to  
3 obtain a personality profile of a patient, correct?

4 A. Yes.

5 Q. Now, you said before the test came back and they  
6 were peculiar. Is that a fair statement?

7 A. The results, yes, were peculiar in that they  
8 didn't seem to represent our impression of Mr. Jones  
9 during the interviews.

10 Q. In your staff conference report you described his  
11 MMPI test results as follows: Quote. Mr. Jones'  
12 clinical profile on the MMPI would suggest his thinking  
13 is similar to someone diagnosed paranoid schizophrenic.  
14 This may be true to a limited extent. However, six of  
15 the clinical scale courses exceeded an F scale score as  
16 82. With scores of this magnitude the MMPI should be  
17 considered questionable value and validity.

18 Is that a statement out of the staff  
19 conference report?

20 A. Right.

21 Q. Dr. Marshall reported that James Jones MMPI test  
22 results created a very sick looking profile but  
23 considered too high to be valid, correct?

24 A. Yes.

25 Q. Now, typically psychological testing such as the

1 MMPI are administered and interpreted by psychologists  
2 and not psychiatrists, correct?

3 A. Correct.

4 Q. Now, it has been suggested that an MMPI profile  
5 like this could raise the possibility that the patient  
6 was malingering, correct?

7 A. Yes.

8 Q. You testified to this. I want to go over it  
9 again. Therefore, there are other possible explanations  
10 for this kind of profile, isn't that true?

11 A. True.

12 Q. You listed them. Let me go through the four  
13 explanations you have given to us, okay.

14 Number one, you said that the scores may  
15 reflect extreme psychopathology.

16 That is extreme problems, right?

17 A. That's right.

18 Q. Number two, you said that the scores could be the  
19 result of confusion or random sampling, correct?

20 A. Correct.

21 Q. Number three, you said the scores may reflect a  
22 cry for help, correct?

23 A. Just one moment. For number two the score could  
24 be a result as a sample --

25 Q. Number three, the results may be a cry for help?

1 A. Correct.

2 Q. Or the scores may be elevated as a result of  
3 idiosyncratic thinking?

4 A. Correct.

5 Q. Now, the scores here were not the result of  
6 confusion or random sampling. You checked the answers  
7 and thought they were reflecting something about the way  
8 he thinks about the world, correct?

9 A. Yes. I think he read them carefully and responded  
10 carefully.

11 Q. When you consider the possibility of malingering,  
12 you look at three different things.

13 You look at the test results, number  
14 one?

15 A. Correct.

16 Q. Number one is you would look at the way the  
17 patient presents himself during the interview and other  
18 settings, correct?

19 A. Correct.

20 Q. And number three, you look at the patient's  
21 history, correct?

22 A. Correct.

23 Q. And during your interviews with James Jones as you  
24 testified before, you did not -- he did not seem to be a  
25 malingerer to you, correct?



1 A. That's correct.

2 Q. And you concluded that James Jones probably was  
3 not malingering?

4 A. That was my impression.

5 Q. You reviewed the specific answers he gave on his  
6 MMPI test as you testified before?

7 A. Yes.

8 Q. And when you reviewed the specific answers on the  
9 test it appeared to you James Jones endorsement of  
10 certain symptoms was consistent with his peculiar view of  
11 the world and the circumstances of his life at the time,  
12 correct?

13 A. Yes. That is a legal situation.

14 Q. This MMPI, which is similar to someone diagnosed  
15 paranoid schizophrenic to you seemed to be consistent  
16 with his peculiar view of the world and circumstances of  
17 his life at the time?

18 A. I felt as though it was the most accurate  
19 interpretation of the results.

20 Q. Now, do you not recall that you and the staff at  
21 MTMHI have raised a suspicion that James Jones was  
22 malingering?

23 A. No. He did not claim to have a mental illness.  
24 We can't accuse someone of malingering when they --

25 Q. Do you not recall that you and the staff at MTMHI

1       raised a serious suspicion that James Jones was  
2       malinger. Is that correct?

3       A.       I think the accurate way to state it, it would be  
4       if we discussed the likelihood of him malinger, we  
5       discounted it and said, no, we don't think he is  
6       malinger.

7       Q.       Do you remember telling us the following -- I do  
8       not recall we ever raised a serious suspicion that Mr.  
9       Jones was malinger?

10      A.       Yes, I said that.

11      Q.       Now, let's talk about Thorazine and Prolixin.

12                    You said before that James Jones' report  
13       indicated that while he was in federal prison he had been  
14       administered the drugs Thorazine and Prolixin, correct?

15      A.       Correct.

16      Q.       When you learned that James Jones may have been  
17       administered these medications, that raised in your  
18       mind a question of serious mental illness in him, did it  
19       not?

20      A.       Yes.

21      Q.       And James Jones explained to you that these  
22       medications had been administered to him to calm his  
23       agitation, correct?

24      A.       That is his explanation.

25      Q.       These medications, Thorazine and Prolixin are

1 among the most powerful anti-psychotic medications  
2 available, correct?

3 A. They were at the time, yes.

4 Q. And it is not likely these medications would be  
5 prescribed merely to calm him down, correct?

6 A. Yes. I am speaking as a psychologist there. I  
7 might want to qualify it.

8 I don't prescribe medication and probably  
9 can't speak with authority that a physician or  
10 psychiatrist might.

11 Q. That is what you told us?

12 A. That is what I told you.

13 Q. You didn't have his past records showing where he  
14 may have been prescribed those medications, did you?

15 A. That's correct. I don't know if he even received  
16 them. I know that is what he said.

17 Q. And you would expect these medications to have  
18 been prescribed for more serious psychological or  
19 psychiatric problems, correct?

20 A. Correct.

21 Q. Now, Dr. Craddock, when you evaluated James Jones,  
22 you were not given information about psychiatric  
23 testimony in his prior murder trial in 1972 to the effect  
24 that he might suffer from schizoid personality and  
25 borderline personality with periodic decompensation with

1       loss of control? You weren't aware of that?

2       A.       I had no knowledge of that.

3       Q.       And when you evaluated James Jones, you were also  
4       not aware at the time of his arrest in this case in 1986  
5       James Jones banged his head against the wall and had to  
6       be restrained and had to be placed in a padded cell for a  
7       period of two or three days?

8                       You weren't aware of that, were you?

9       A.       There might have been a brief mention from the  
10      DeDe Wallace Center that he was banging his head. I  
11      don't recall him needing a padded cell.

12      Q.       You didn't recall ever considering the idea he may  
13      have been banging his head?

14      A.       His wife may have mentioned it to Ms. Smith in the  
15      social history or we had gotten some knowledge of it. I  
16      do look through and see those.

17                       We did not give a serious thought to what  
18      that might mean.

19      Q.       You were not aware this information, first of  
20      all, about the prior testimony in the 1972 trial to the  
21      effect he might -- you said before that you were not  
22      aware of the testimony given in the 1972 trial to the  
23      effect that he might suffer from a schizoid personality  
24      and borderline personality disorder? You already said  
25      that?

1 A. That's correct.

2 Q. You were not aware this information was in the  
3 prosecutor's file about the trial in this case?

4 A. Correct.

5 Q. Now, the MTMHI file doesn't mention the fact at  
6 the time of James Jones' earlier arrest in 1969 he banged  
7 his head against the wall which prompted the court in  
8 that case to order an evaluation.

9 You weren't aware of that, were you?

10 A. Is that the evaluation done at Saint Elizabeth?

11 Q. It led to the evaluation of Saint Elizabeth. That  
12 was the second evaluation.

13 A. I know he was seen twice at Saint Elizabeth and  
14 mentioned the head banging in the report we received.

15 Q. But you were not aware that is what prompted the  
16 evaluation?

17 A. I challenge that. If you will give me just a  
18 moment.

19 The Saint Elizabeth report states the  
20 patient explained his suicidal behavior, the banging,  
21 cutting, hanging, banging the head as activities designed  
22 to influence the people around him rather than because --  
23 rather than because of his demise.

24 That is where we got wind of his head  
25 banging.

1                   Your question was, was that the reason  
2                   that prompted the evaluation?

3           Q.       Right. There is nothing in there that explains  
4                   that, is there?

5           A.       I don't see that that is what prompted the  
6                   evaluation.

7           Q.       All right. Now, your tests, as you indicated  
8                   before, showed that James Jones is an adult with normal  
9                   intelligence, correct?

10          A.       Correct.

11          Q.       And you would agree that head banging is an  
12                   extremely unusual behavior for adults with normal  
13                   intelligence?

14          A.       That is true.

15          Q.       In fact, you rarely see that kind of behavior  
16                   among adults with normal intelligence at the forensic  
17                   services program at MTMHI?

18          A.       Very rarely.

19          Q.       Dr. Craddock, you recognize this book, don't you?

20          A.       Yes.

21          Q.       This is a book you always use probably on a daily  
22                   basis?

23          A.       Correct.

24          Q.       This is the diagnostic and statistical manual of  
25                   mental disorders, fourth edition, correct?

1 A. Correct.

2 Q. Published and promulgated, actually, by the  
3 American Psychiatric Association?

4 A. Correct.

5 Q. This is the standard reference in diagnosing  
6 patients with psychological or psychiatric problems,  
7 isn't it?

8 A. In the United States, yes.

9 Q. And the purpose of the DSM is -- it is called the  
10 DSM sometimes?

11 A. Right.

12 Q. And the purpose of the DSM is to classify mental  
13 disorders and nomenclature or temporal mental health to  
14 talk about mental disorders, is that true?

15 A. True.

16 Q. And back in 1987 there was a prior version of  
17 their DSM in effect. It was DSM 3-R, I believe, is that  
18 correct?

19 A. That's correct.

20 Q. And this is the next version of the 3-R?

21 A. This is right.

22 Q. And in both the 3-R and the 4, borderline  
23 personality disorder is a disorder that is defined in  
24 these works?

25 A. Correct.

1 Q. Now, borderline personality disorder is defined  
2 by certain so-called diagnosis criteria in the DSM,  
3 correct?

4 A. Yes.

5 Q. You look at certain characteristics in the patient  
6 and if they have enough of the characteristics which are  
7 called diagnostic criteria, you can give them that kind  
8 of diagnosis, correct?

9 A. That is the way it works.

10 Q. And borderline personality disorder is a diagnosis  
11 you give patients who have serious problems, correct?

12 A. Who meet the criteria, yes.

13 Q. Now, let me read from the DSM 4. The opening  
14 paragraph of the DSM 4, and you can look at it here --  
15 did you bring it with you?

16 You don't go anywhere without it?

17 A. Just about.

18 Q. You might look at page 650, I believe?

19 A. All right.

20 Q. Are you there?

21 A. Yes.

22 Q. And the first paragraph or first sentence,  
23 borderline personality disorder diagnosis features says  
24 the essential feature of borderline personality disorder  
25 is a pervasive pattern of instability, of interpersonal



1 relationships, self-image, and affects, and marked  
2 impulsivity that begins by early adulthood and is present  
3 in a variety of contexts?

4 A. That is what it says.

5 Q. Now, if you will go to the end of the chapter on  
6 borderline personality disorder, 654, it lists the  
7 various diagnostic criteria for borderline personality  
8 disorder, correct?

9 A. Yes.

10 Q. And nine different criteria, correct?

11 A. Yes.

12 Q. If you find five out of nine present in a patient  
13 then that justifies a diagnosis of borderline personality  
14 disorder, correct?

15 A. That is what it reads. That is what it says  
16 here.

17 Q. And those include the following: Frantic efforts  
18 to avoid real or imagined abandonment. Number one.

19 Number two, a pattern of unstable and  
20 intense interpersonal relationships characterized by  
21 alternating between extremes of idealization and  
22 devaluation.

23 Another one is identity disturbance  
24 markedly and persistently unstable self-image or sense of  
25 self.

1                   Number four is impulsivity in at least two  
2                   areas that are self-damaging including sex, substance  
3                   abuse, reckless driving, binge eating, et cetera.

4                   Number five. Recurrent suicidal behavior,  
5                   gestures, or threats of self-mutilating behavior.

6                   Number six. Affective instability due to  
7                   a marked reactivity of mood, including, you know,  
8                   episodic dysphoria, irritability or anxiety.

9                   Number seven, chronic feeling of  
10                  emptiness.

11                  THE COURT: You will have to slow down a  
12                  little built.

13                  Q.       Number eight, inappropriate, intense anger or  
14                  difficulty controlling anger.

15                  Number nine, transient stress-related  
16                  paranoid ideation or severe dissociative symptoms.

17                  Correct?

18                  A.       Right.

19                  Q.       These criteria are basically the same that existed  
20                  back in 1987 with the DSM 3-R, correct?

21                  A.       Very close, yes.

22                  Q.       And one of the nine signs of borderline  
23                  personality disorder is self-mutilating behavior,  
24                  correct?

25                  A.       Yes.

1 Q. Head banging can be self-mutilating behavior in  
2 this sense, correct?

3 A. That's right.

4 Q. And, therefore, head banging can indicate the  
5 presence of one of the signs of borderline personality  
6 disorder, correct?

7 A. Yes.

8 Q. And recurrence of suicidal behavior, seizures is  
9 also included among the signs of a personality --  
10 borderline personality disorder, correct?

11 A. That is number five, yes.

12 Q. You also stated to us you see other indicators of  
13 James Jones having borderline personality disorder, don't  
14 you?

15 A. Yes.

16 Q. In fact these include affective instability,  
17 correct?

18 A. That's right.

19 Q. And does that mean basically emotional  
20 instability?

21 A. Yes.

22 Q. Going from one extreme to another, you can be  
23 distressed or agitated or go to some other emotional  
24 state like that?

25 A. Extreme emotional swings.

1 Q. That was something you mentioned to us you could  
2 possibly see in James Jones?

3 A. Yes, and reported by his wife.

4 Q. And then another thing that is inappropriate is  
5 intense anger.

6 That is one of the other characteristics  
7 you can see in James Jones?

8 A. Reported by his wife. We didn't see that while he  
9 was with us.

10 Q. You mentioned that was a feature that might exist  
11 in this case, correct?

12 A. We are accepting it as his wife reported it.

13 Q. Identity disturbance was one of the things you  
14 mentioned you saw potentially in James Jones, correct?

15 A. To us he did not have a good sense of himself or  
16 where he was going. I think that is also mentioned in  
17 the Saint Elizabeth report.

18 Q. That might help explain why he would talk about  
19 becoming a minister, talk about becoming a Muslim,  
20 talking about different kinds of religious conversions  
21 that seemed confusing.

22 That is all indicative of this?

23 A. And questioning his self-worth.

24 Q. You saw that in him?

25 A. Yes.

1 Q. You saw paranoid ideation in him?

2 A. Yes. I don't know how pervasive that was. Like  
3 if it is alive even during pattern -- or more of a  
4 condition of his situation.

5 Q. Of course you didn't have a social history to  
6 figure that out, did you?

7 A. We were not successful in contacting his parents  
8 or his siblings.

9 Q. You didn't have a thorough social history to  
10 figure it out, correct?

11 A. That's correct.

12 Q. Now, the idea of borderline personality disorder  
13 was really germinated, originated back in the 1930s, is  
14 that correct, when some -- I think a person by the name  
15 of Stern came up with the the term?

16 A. That very well could be.

17 Q. And the idea was that a person with borderline  
18 personality disorder is not -- doesn't present himself  
19 normally as being psychotic?

20 A. Correct.

21 Q. But he is somebody that can slip into a psychotic  
22 state, correct?

23 A. Yes. That is what borderline personality disorder  
24 means. The borderline of becoming psychotic.

25 Q. That is the term borderline?

1 A. Correct.

2 Q. And they can lapse into psychotic states when they  
3 are under stress, correct?

4 A. That is part of the definition, yes.

5 Q. And borderline personality disorder wasn't  
6 included as a separate diagnostic category until the  
7 DSM 3 in 1980, correct?

8 A. I will take your word for that.

9 Q. But it was included after that time, correct?

10 A. Yes.

11 Q. And borderline personality disorder is a life  
12 threatening condition?

13 A. Yes. Symptoms may disappear if somebody reaches  
14 their '50s or '60s.

15 Q. This is a serious disorder?

16 A. It can be very debilitating for the individual in  
17 respect they can't deal interpersonally with other  
18 individuals.

19 Q. A person with this kind of disorder as indicated  
20 in the criteria often expresses feelings of dislike  
21 toward people?

22 A. They tend to see people in black and white, not  
23 shaded gray.

24 Q. This is a phenomenon sometimes called splitting?

25 A. That's correct.

1 Q. You see someone some way as a devil and you may  
2 see another person another way as a savior or the same  
3 person at different ways at different times?

4 A. One way the defendant may see you as the person  
5 that can do everything right and nothing wrong and then a  
6 day or so later it will be just the opposite.

7 Q. This is a product of mental illness called  
8 borderline personality disorder?

9 A. That is the symptoms of the disorder, yes.

10 Q. Now, you didn't give James Jones a diagnosis of  
11 borderline personality disorder because you say he was  
12 calm and quiet and cooperative during the evaluation,  
13 correct?

14 A. That is a portion of it. Another portion is he  
15 did not describe people in terms of black and white to  
16 us.

17 He didn't seem to express the feelings of  
18 emptiness, of being frantic and abandonment.

19 We didn't see the the characteristics  
20 that I think would be deserving of a diagnosis of  
21 borderline.

22 Q. Would you look at the next exhibit which I believe  
23 we are going to mark now as Exhibit 125. If we are  
24 looking at the same thing, Dr. Craddock, there should be  
25 some handwritten notes from the MTMHI file called

1 interpersonal file?

2 A. I have them dated 22-87 and 25-87.

3 Q. Yes. These are not all of them. These are  
4 selected pages from the file?

5 A. I have it.

6 Q. I have got them highlighted, so some of the  
7 portions highlighted in yellow. Let's go through that.

8 On the first page of the bottom of the --  
9 let me ask you this. These notes are notes taken by  
10 the staff at MTMHI about their observations of the  
11 patient?

12 A. That's correct.

13 Q. Now, at the bottom of 25-87 it says patient has  
14 been cooperative but tends to be verbal about his belief  
15 and religion. No major problems.

16 Do you see that?

17 A. Yes.

18 Q. If you turn over to the bottom of the next page,  
19 February 11. Patient seen by doctor -- can you read  
20 that -- Marshal due to the --

21 A. Stands for complaint of.

22 Q. Complaint of fear of losing control. Says he is  
23 worried because he thinks he may get the death penalty,  
24 becomes fearful, thinks people don't -- can you read  
25 that?



1 A. Understand.

2 Q. Understand Muslims but I don't something, any  
3 other way. Something to that effect.

4 Do you see that?

5 A. Yes.

6 Q. Now, while he was there he became extremely  
7 distraught and asked to see Dr. Marshall?

8 A. On the 11th of February.

9 Q. And the memo prepared by Dr. Marshall which was  
10 referred to during your direct examination is the next  
11 two pages, correct?

12 A. That's correct.

13 Q. And because of James Jones' condition at that time  
14 he was prescribed Visteral by Dr. Marshall, correct?

15 A. That's correct.

16 Q. I have highlighted in the yellow some of the  
17 things, some of the things he said to Dr. Marshall.

18 He said in the middle, I came to Nashville  
19 and saw all those little kids, girls and boys, facing the  
20 same situation I faced at 15. I am not a criminal. I  
21 just tried to help, but with my prior record, as they  
22 say, et cetera. Correct?

23 A. Correct.

24 Q. And then down at the bottom it says the detectives  
25 also turned my wife against me. We were only married two

1 months before I got busted.

2 Isn't that some indication of a sign of  
3 abandonment?

4 A. Yes.

5 Q. Now, the next page it says -- that is a  
6 characteristic, a central characteristic of borderline  
7 personality, is that correct?

8 A. Yes.

9 Q. Sometimes that can result from childhood abuse?

10 A. That is very characteristic of being abandoned as  
11 a child.

12 Q. They carry that sense of abandonment throughout  
13 the rest of their life?

14 A. That's correct.

15 Q. And it becomes part of the disorder?

16 A. That's right.

17 Q. Now, if you look at the next page it says at the  
18 top, when asked about killing the allegedly -- that is a  
19 typo -- victims, he said I don't know if I killed him or  
20 not.

21 All my life black dudes have tried to rape  
22 me and have stabbed me. I vowed when I get out of here I  
23 would tell all the little kids the truth. All their  
24 heros or fagets and dope dealers. They are all lost like  
25 I was. I used to work for the Nashville Baptist Sunday

1 School Board. All the money they were making and nobody  
2 helping the people in the gettos.

3 Do you see that?

4 A. Yes.

5 Q. And then the very bottom of the report or end of  
6 the report the patient was obviously quite distraught and  
7 depressed. He cried at times during the interview.

8 Correct?

9 A. Right.

10 Q. If you will look at the next page, 2-12-87. Do  
11 you see the note, Mr. Jones has fluctuated between  
12 spontaneous interaction with staff and peers, and  
13 completely withdrawn into his own and not eating these  
14 past four days.

15 Patient presently presents a depressed  
16 mood, and his affect is flat. While patient manifests no  
17 gross bizarre behavior, he complained of a lack of or  
18 very poor quality of sleep.

19 Patient is not eating his evening meals  
20 and personal hygiene has deteriorated.

21 Do you see that?

22 A. Yes.

23 Q. This indicates sort of a fluctuation in his mood?

24 A. Yes.

25 Q. It also indicates depression?

1 A. Yes.

2 Q. Depression may explain why he was somewhat quiet  
3 during the period at MTMHI?

4 A. Correct.

5 Q. Depression is a characteristic or is something  
6 that borderline personality disorder sometimes suffer  
7 from, is that correct?

8 A. That is consistent with borderline.

9 Q. That is part of the sense of emptiness, is that  
10 correct?

11 A. Yes.

12 Q. And then the next page, February 16, '87.

13 Mr. Jones appears to be doing a little  
14 better since he was put on med. The patient is eating,  
15 habits are good at this time.

16 Looks like the medication had some good  
17 affect?

18 A. That is questioned because he typically refused  
19 the medication. As I look back and see at the times he  
20 took it was -- I think that is what she thinks there. I  
21 don't know if that is accurate.

22 Q. 2-18. Patient does not seem to interact as much  
23 with staff recently. Patient occasionally paces the  
24 floor and seemingly is very pensive but eating habits  
25 have improved some. There were times he withdrew?

1 A. That's right.

2 Q. Dr. Craddock, although you did not give James  
3 Jones the diagnosis of borderline personality disorder,  
4 you cannot rule out that diagnosis, can you?

5 A. That's correct.

6 Q. And based upon your review of the records, your  
7 recollection of the MTMHI evaluation, you would not take  
8 issue with another psychiatrist or psychologist diagnosis  
9 of borderline personality disorder, would you?

10 A. That's right.

11 Q. And in your evaluation you were not given much  
12 information about the possible physical or sexual abuse  
13 of James Jones during his childhood or his extensive  
14 family dysfunction?

15 A. We had little information, that is correct.

16 Q. Childhood abuse can be a contributing factor to  
17 mental illness including personality disorder such as  
18 borderline personality disorder, correct?

19 A. Correct.

20 Q. Would you look at the next exhibit, please. This  
21 is number 125. It is a two-page exhibit. Do you see  
22 that?

23 A. This --.

24 Q. I am sorry. It is 126. Now, Exhibit 126, the  
25 first page is a form called referral for follow-up

1 services for Middle Tennessee Mental Health Institute.

2 Do you see that form?

3 A. I have it.

4 Q. This was a form that I believe was filled out by  
5 Rebecca Smith, wasn't it?

6 A. Correct.

7 Q. Again, she is the psychiatric social worker and  
8 the one that did things at the termination of the  
9 evaluation process, correct?

10 A. Correct.

11 Q. Would you look down about two thirds of the way  
12 where it says social situation.

13 A. Yes.

14 Q. It says patient has an extensive history of  
15 incarceration in the federal penal system. He is  
16 currently having mental difficulties?

17 A. Marital.

18 Q. Marital difficulties. There is no known contact  
19 with family of origin.

20 Do you see that?

21 A. Yes.

22 Q. And then down below it says services recommended.  
23 I can't read the first word there?

24 A. Supportive.

25 Q. Supportive services for prevention of possible

1 suicidal acting out.

2 Do you see that?

3 A. That's correct. Yes.

4 Q. And so there was some concern at MTMHI of possible  
5 suicidal acting out when you left the institution?

6 A. Yes.

7 Q. If you look at the next page there is a letter  
8 from Rebecca Smith to Leonard Morgan at DeDe Wallace  
9 dated February 25, 1987.

10 Do you see that?

11 A. Yes. I have it.

12 Q. That is out of your file, correct?

13 A. Correct.

14 Q. We are recommending that he receive follow-up  
15 services during the interim period of incarceration?

16 A. Correct.

17 Q. And you're not aware whether he received any  
18 interim services, follow-up services during that period  
19 of incarceration, are you?

20 A. I am not aware, that is right.

21 Q. In your evaluation of James Jones, you did not  
22 consider any issues concerning diminished capacity at the  
23 time of the offense, did you?

24 A. That's correct.

25 Q. In your evaluation of James Jones, you did not

1 consider how James Jones' mental condition might be a  
2 mitigating factor in deciding whether to impose the death  
3 sentence, did you?

4 A. We were not asked to and did not.

5 Q. Dr. Craddock, before James Jones' trial in '87,  
6 were you ever approached by any attorney representing  
7 James Jones to talk about this case?

8 A. I was not.

9 Q. Do you know whether before the 1987 trial anyone  
10 representing James Jones talked to anyone at MTMHI about  
11 him?

12 A. To my knowledge, they did not.

13 Q. If a defense lawyer wants to talk to you at MTMHI  
14 about evaluation of the client, will you talk to the  
15 lawyer?

16 A. We will. We are a friend of the court. We will  
17 speak to either party.

18 Q. If defense counsel had come to you to talk to you  
19 about James Jones, he would have access to you and  
20 anybody else that worked in the case, correct?

21 A. Right.

22 Q. Dr. Craddock, are you familiar with Dr. Robert  
23 Sadoff?

24 A. Yes.

25 Q. Would you agree he is one of the 10th leading



1 forensic psychiatrists in the country?

2 Isn't that what you told me?

3 A. I would put him among the top 10.

4 Q. You have even attended a seminar of his up in  
5 Pennsylvania?

6 A. That's correct.

7 Q. You would agree he is highly qualified and  
8 respected in the field of forensic psychiatry?

9 A. Yes, he is.

10 Q. And he is credible, trustworthy, would you  
11 agree?

12 MR. BAKER: I object to that line of  
13 testimony and move to strike it. He is simply trying to  
14 prove credibility of the witness in this case --

15 THE COURT: I don't think the witness can  
16 testify certainly on credibility but he can testify about  
17 his knowledge of his profession as to who is viewed at  
18 the top of the profession or not. I think there is a  
19 foundation as to that.

20 As to credibility, I don't think we have  
21 it.

22 Overruled in part and sustained in part.  
23 Go ahead.

24 MR. MACLEAN: That is all for now.

25 THE COURT: I have a couple questions.

1                   According to what you testified, Mr. Jones  
2                   stated to you he was on drugs while he was simultaneously  
3                   attempting to stop drug dealers from selling drugs. That  
4                   strikes me as slightly inconsistent.

5                   Did you consider that as a part of your  
6                   evaluation?

7                   Did anybody notice those two things might  
8                   be at least ironic?

9                   A.       We did. He said he used the marijuana only  
10                  for religious purposes and then he said that he had  
11                  three joints within three hours going over to this drug  
12                  house.

13                  There were a few other things that made us  
14                  question his credibility.

15                  The Saint Elizabeth report said he had  
16                  used heroin and would consume considerable amounts of  
17                  wine.

18                  He told us that the only drugs he ever  
19                  used was, I think he said, cocaine on one occasion and  
20                  then marijuana. So, we did question is credibility on  
21                  some things.

22                  The other thing to MTMHI, he mentioned --  
23                  one of the questions -- I am afraid of using a knife or  
24                  anything very sharp or pointed. He is saying this is  
25                  true. So, if as he is accused of assaulting the victims,

1 we wonder -- we are questioning his credibility and how  
2 honest he is with us.

3 THE COURT: You mentioned not by name but  
4 mentioned somebody was referred to as the third person  
5 involved in the crime.

6 Does your report reflect a name in that  
7 regard?

8 A. No. He gave us no names of any individuals.

9 THE COURT: Let me make sure I understand  
10 your testimony.

11 You're saying you never talked to any of  
12 Mr. Jones' trial lawyers about the mental condition, is  
13 that correct?

14 A. Yes. Only one we had knowledge of was Mr.  
15 McAlpin.

16 THE COURT: Did Lionel Barrett ever  
17 contact you?

18 A. No.

19 THE COURT: Did Sumter Camp ever contact  
20 you?

21 A. No.

22 THE COURT: Did anyone claiming to  
23 represent any of the people ever contact you?

24 A. To my knowledge they did not. I assume you are  
25 asking me personally as well as the evaluation team.

1                   No, they did not contact me but there was  
2                   also Dr. Marshall.

3                   THE COURT:   You can't speak for Dr.  
4                   Marshall.

5                   A.        I have no knowledge.   He didn't relay to me he had  
6                   been contacted by them.

7                   THE COURT:   You mentioned Dr. Sadoff.  
8                   This is 1998.   You evaluated Mr. Jones in 1987?

9                   A.        11 years ago.

10                  THE COURT:   That is a passage of some  
11                  time.   How does any passage of time affect the evaluation  
12                  of someone as to how their mental condition -- what the  
13                  mental condition may have been at some point in time in  
14                  the past?

15                  A.        I think it would be very difficult for me to  
16                  assess someone 11 years prior.   I have been asked to do  
17                  it and essentially what you are doing is trying to get  
18                  different peoples' recollections of what occurred and  
19                  often people try to make sense out of things that don't  
20                  seem to make sense.

21                  THE COURT:   What kind of things would you  
22                  look at?

23                  A.        In this case, I guess it would be depending on  
24                  what the question was as if we would look at it.   If  
25                  there was an insanity defense, we would have to determine

1     whether the person was out of touch with reality and felt  
2     as though they had an appreciation for the wrongfulness  
3     of what they had done.

4                     It might be did they make an effort to  
5     disguise their allegedly illegal activities, try to take  
6     into account their explanation.

7                     There is a whole variety of things that  
8     are taken in in trying to answer a question. But just  
9     determining a person's mental status, if they were going  
10    to work or not, I might find out their work evaluation,  
11    did they seem to have their thoughts collected, were they  
12    able to concentrate and focus, able to follow  
13    instructions or did they appear to be unable to  
14    concentrate, were they making comments that really would  
15    suggest they had poor judgment and reasoning and were  
16    they able to use good decision-making processes at work.

17                    If that was the case, I would wonder why  
18    were they not able to do it at home and elsewhere.

19                    THE COURT: I have the general drift of  
20    what will have to be looked at.

21                    I asked you whether you had ever been  
22    contacted by Lionel Barrett or Sumter Camp. You  
23    mentioned Mr. Neal McAlpin.

24                    Are you aware of anybody on the staff of  
25    the institution being contacted?

1 I understand you can't speak for the full  
2 staff. Are you aware of any?

3 A. I am not aware of anyone at forensic services that  
4 was contacted by Mr. Jones' defense team other than Mr.  
5 McAlpin's letter about the diet.

6 THE COURT: All right. Mr. MacLean, do  
7 you want to follow-up on any of that.

8 MR. MACLEAN: Yes, sir.

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## EXAMINATION OF SAMMUAL CRADDOCK

BY MR. MACLEAN:

Q. Now, Dr. Craddock, this business about the taking of drugs and trying to eliminate drugs and this confusion, first of all James Jones never hid the fact he wanted to eliminate drugs from the the community, did he?

A. That is what he proposed.

Q. And he also never hid the fact from you he smoked marijuana that day, correct?

A. That's correct.

Q. And isn't it true with someone with identity confusion can be mixed up about these things?

THE COURT: That is part of what I asked him about.

A. The identity confusion typically decides if the person is asking himself where am I going in life, what are my goals and how am I going to achieve them.

I find it contradictory, not an identity confusion for somebody to say there is no place for drugs but then be consuming them.

Q. But he consumes one type drug and may think one way of consuming drugs is different than another way of consuming drugs.

You may think one way is spiritual and

1 consume drugs in another way is bad?

2 A. That is speculation. Clinically, I can't address  
3 that. I can't dismiss it either.

4 Q. Now, Judge Campbell asked you about what the  
5 passage of time would do in trying to evaluate somebody,  
6 correct?

7 A. Yes.

8 Q. Whenever you evaluate somebody and try to  
9 determine what that person's mental condition is at the  
10 time of the offense it is necessary to acquire a  
11 retrospective view?

12 A. Always does.

13 Q. You look at the evidence at the time and all  
14 the available information to try to figure it out,  
15 correct?

16 A. That's correct.

17 Q. When you determined this, you didn't read any  
18 testimony, did you, of any party?

19 A. I was given no testimony.

20 Q. And you didn't interview any people relating to  
21 the offense or any of the detectives, did you?

22 A. That's right.

23 Q. In fact, you looked through your entire file,  
24 there is very little information if any about  
25 circumstances surrounding the offense except what is in



1 Mr. Zimmermann's letters, isn't that true?

2 A. I think one hundred percent is from Mr.  
3 Zimmermann's letter.

4 Q. Now, in talking about time, it's important to  
5 think about the course of a disorder, correct, or mental  
6 illness, what happens to that mental illness over a  
7 period of time, correct?

8 A. Would you repeat that. I am sorry.

9 Q. Now, would you turn to the page 652 of the DSM.  
10 If you will look at the bottom of page 652.

11 Do you see that?

12 A. Yes.

13 Q. Do you see the topic there is course? It is  
14 talking about the course of the disorder through ones  
15 life.

16 Do you see that?

17 A. Yes.

18 Q. It says this. There is considerable variability  
19 in the course of borderline personality disorder. The  
20 most common pattern is one of chronic instability in  
21 early adulthood with episodes of serious affective and  
22 impulsive dyscontrol and high levels of use of health and  
23 mental health resources.

24 What does dyscontrol mean?

25 A. Lack of control.

1 Q. The impairment from the disorder and risk of  
2 suicide is greatest in young adult years and gradually  
3 wanes with advancing age, correct?

4 A. Correct.

5 Q. In other words, the symptomology of borderline  
6 doesn't ever go away but it declines over time as someone  
7 grows older?

8 A. That's correct.

9 Q. As one psychiatrist explained to me, and I ask you  
10 if you agree, a person with borderline personality  
11 disorder kind of mellows out after awhile?

12 A. That is a good way of putting it.

13 THE COURT: Mr. Baker, any redirect.  
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## EXAMINATION OF SAMMUAL CRADDOCK

BY MR. BAKER:

Q. I direct your attention to the MMPI test for just a moment.

Your conclusion was that this was not a valid test, is that correct?

A. Valid in respect that I don't think it accurately represented Mr. Jones.

Q. Would it be responsible to draw any conclusions from that test?

A. I think it would be irresponsible.

Q. When you do a test such as the MMPI or a psychological evaluation in general, you don't look at one test in isolation or one specific thing in isolation. You look at the complete evaluation?

A. That's correct.

Q. That is what you did at MTMHI?

A. Yes.

Q. After doing that, you concluded that this person was not delusional?

A. Correct.

Q. Was not psychotic?

A. Correct.

Q. There was no evidence, you could not support an insanity defense?

1 A. We could not, that is right.

2 Q. He was competent to testify?

3 A. Competent to stand trial, correct.

4 Q. I mean stand trial.

5 Now, his head banging that is mentioned,  
6 was there any evidence that he banged his head at  
7 MTMHI?

8 A. He became upset and a recording of him banging his  
9 fist on the shelf, I think, but it was probably the  
10 counter. And as I recall this occurred after he received  
11 a call. I don't know from who. But somebody reported  
12 the information that it did not make him happy.

13 Q. Did it appear to be an act of frustration or  
14 anger?

15 A. I believe frustration would be a good way to put  
16 it.

17 Q. And a person facing criminal charges, particularly  
18 first degree capital murder, it is not unusual for them  
19 to be depressed or otherwise indicate various emotional  
20 responses?

21 A. It would be probably more concerning to us if the  
22 defendant was disconcerned or seemingly unaffected by  
23 their status.

24 Occasionally we do get individuals that  
25 don't seem to care what the consequences are.

1 Q. But, in fact -- I marked it as Defendant's Exhibit  
2 3 -- referring to your inner-disciplinary notes on  
3 February 11, 1987.

4 MR. MACLEAN: Do you have a copy for me?

5 MR. BAKER: You can refer to that copy.

6 Q. He was scheduled to be released from MTMHI about a  
7 week or so after this date, correct, approximately  
8 February 20?

9 A. Correct.

10 Q. This is February 11th and the evaluation is  
11 essentially winding down?

12 A. In to its last weeks.

13 Q. In fact basically what he is expressing here --

14 MR. REDICK: I object to the leading  
15 nature of these questions.

16 Q. I will have you read through that and can you  
17 explain what that indicates he is expressing?

18 A. Well, 2-11-87 patient again seen by Dr. Marshall  
19 due to complaining of the fear of losing control. He  
20 says he is worried because he thinks he may get the death  
21 penalty, become fearful.

22 Q. Is that an unusual reaction for a person facing  
23 the death penalty?

24 A. I don't think it is unusual, no.

25 Q. Did he ever indicate to you that the reason he

1       used drugs was for spiritual or religious reasons?

2       A.       That is what he told us. That is the only reason  
3       he uses them.

4       Q.       You mentioned earlier you never talked to defense  
5       counsel about the case.

6                       Do you know if you talked to them at the  
7       trial itself?

8       A.       I did not appear at the trial.

9       Q.       Were you ever present at a court proceeding  
10      regarding this case?

11      A.       I think the first court proceeding I have been to  
12      is here.

13      Q.       You have no memory talking to defense counsel?

14      A.       That's right.

15      Q.       Doctor, is a personality disorder sufficient to  
16      establish an insanity defense?

17      A.       I have never -- excuse me. On one occasion an  
18      individual had a personality disorder that I thought that  
19      contributed appreciably to other disorders and I  
20      supported an insanity defense on a murder charge. On one  
21      occasion I did. That is again in 12 years.

22                       But generally speaking a personality  
23      disorder which includes such things as far as an insanity  
24      defense goes, I think they have used it for gambling and  
25      a few other compulsive kinds of of disorders.

1                   Generally speaking the court does not  
2                   support insanity defense.

3           Q.       Personality disorder would include anti-social  
4                   personality disorder, antisocial personality?

5           A.       Right, narcissistic, passive.

6                   MR. BAKER: That is all. I move for entry  
7                   of Exhibit 3.

8                   THE COURT: Set it on the table here.

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## EXAMINATION OF SAMMUAL CRADDOCK

BY MR. MACLEAN:

Q. Dr. Craddock, just a few questions here.

Dr. Craddock, if you did not attend the trial in this case back in 1987 then is Cheryl Blackburn's affidavit incorrect where she says in her affidavit I escorted Dr. Craddock to the courtroom and sat with him while the defendant testified?

A. I would say it is. I simply do not remember that.

Q. So, you're saying that the prosecutors in this case back in 1993 submitted an affidavit that was false?

A. I am saying that or I have completely forgotten. I feel relatively certain I wasn't called down to the courthouse.

Again, I make mistakes and forget things like everybody else. I don't recall ever going down to the courthouse.

Q. Dr. Craddock, a dissociated episode is somewhere somebody dissociates and his mind leaves the present reality?

A. It is called an altered state of consciousness.

Q. Psychosis really is sort of a extreme form of that or really a dissociation of the mind, correct?

A. Psychosis refers to a state of the mind where the person is no longer in touch with reality.



1 Q. And if you would look at page 651 of the DSM,  
2 please.

3 You will look at the bottom of page 651.  
4 I believe you also confirmed this to us separately from  
5 the DSM.

6 The DSM says this about borderline  
7 personality disorder. It says, quote, during the period  
8 of extreme stress transient paranoid ideation or  
9 dissociative symptoms depersonalization may occur but  
10 these are generally of insufficient severity or warrant  
11 additional diagnosis. These episodes occur most  
12 frequently in response to a real or imagined abandonment.  
13 Symptoms tend to be transient lasting minutes or hours.

14 Do you see that in the DSM?

15 A. Yes, I do.

16 Q. And would you agree with that, sir?

17 A. Yes, I do.

18 THE COURT: Mr. MacLean, the function of  
19 recross is to take up new matters that came out on  
20 direct. I don't recall hearing any of this.

21 MR. MACLEAN: He did testify to that.

22 THE COURT: On this particular point?

23 MR. MACLEAN: Yes.

24 THE COURT: I don't recall it. Go ahead  
25 then.

1 MR. MACLEAN: He did. I asked him that  
2 question.

3 Q. Didn't you tell us that --

4 THE COURT: I mean in response to Mr.  
5 Baker's questions.

6 MR. MACLEAN: No, not in response to his  
7 questions.

8 THE COURT: It seems like you are plowing  
9 the same ground.

10 MR. MACLEAN: I apologize.

11 Q. You testified in redirect about your not having  
12 found insanity in cases involving personality disorders  
13 except in rare occasions.

14 Do you recall, Dr. Craddock, testifying  
15 in the Bobby Wilcoxon (ph) case?

16 A. I remember testifying in Chattanooga about the  
17 death penalty but I did not testify in his trial.

18 Q. Right. A post conviction case?

19 A. Yes.

20 Q. And that was within the last year or so?

21 A. Yes.

22 Q. And do you recall the opinion of the court where  
23 it says Dr. Craddock, a clinical psychologist for the  
24 state was the only expert who testified that Mr. Wilcoxon  
25 (ph) was fully competent to withdraw his petition, and it

1 goes on and says all his testimony in the evaluation was  
2 completely without credibility to this court.

3 Do you recall that finding by the court.

4 MR. BAKER: Your Honor, I object to the  
5 line of relevance as to what this other case was.

6 THE COURT: Obviously Mr. MacLean is going  
7 to the draw the conclusion this witness doesn't have  
8 credibility. While we have the witness here, let him  
9 tell us why he is credible.

10 Q. Do you recall that finding by the court?

11 A. I am sorry. I am not sure you are referring to  
12 who was credible.

13 Q. You, as a he mentioned, your testimony in  
14 evaluating was completely without credibility to this  
15 court.

16 Do you recall that finding in this  
17 Wilcoxon (ph) case?

18 A. I am sorry. I don't follow you. Are you saying  
19 that was my testimony or somebody accused me of that?

20 Q. This is what the court found?

21 A. I was without credibility?

22 Q. Right?

23 A. I have no knowledge of it. I left the courtroom.

24 Q. Where the court says this, Dr. Craddock also  
25 admitted that while talking to the petitioner he had

1 exhibited certain behavior which well may be indicative  
2 of mental illness. He insisted in his belief he was  
3 competent at the time of his evaluation.

4 Do you recall the court making that  
5 finding.

6 THE COURT: The witness said he doesn't  
7 know any of that.

8 MR. BAKER: I object to that.

9 MR. MACLEAN: That is all.

10 THE COURT: All right. Dr. Craddock,  
11 thank you. You may step down.

12 Mr. Baker, are you done?

13 MR. BAKER: Yes, sir.

14 THE COURT: All this is very enlightening.  
15 We have now completed the two witnesses we wanted to  
16 complete. The it is nearing 4:30. We are going to take  
17 up another matter.

18 Any other matters we will take up in this  
19 case will be taken up Monday morning, unless there is  
20 something brief that you need to talk about.

21 MR. MACLEAN: Your Honor, the one  
22 matter -- and I certainly think this can be taken up on  
23 Monday if Your Honor wishes --

24 THE COURT: Go ahead and tell me what it  
25 is.

1                   MR. MACLEAN: It is the response to the  
2                   discovery to Dr. Martell. We are heading toward the  
3                   hearing on Monday and he is expected to be in town to  
4                   testify on Tuesday or Wednesday.

5                   We do not have the responses to those  
6                   discovery requests. The Court ordered they be responded  
7                   to by yesterday.

8                   So, this is putting us into a situation  
9                   that I thought the Court's order was designed to avoid,  
10                  so we would get answers to those questions before of the  
11                  testimony. That is why I am bringing it up.

12                  THE COURT: Let's take it up right now.

13                  MR. MACLEAN: Your Honor, I would also add  
14                  we don't have Dr. Marshall's report at this time either.

15                  MR. BAKER: Your Honor, we discussed that.  
16                  The reason for that is because the documents that were  
17                  supplied to Dr. Martell from the petitioner were  
18                  basically late in coming.

19                  I thought we had an understanding with  
20                  counsel regarding that expert as well as some of their  
21                  experts.

22                  MR. MACLEAN: We do, Your Honor. Except  
23                  in light of this combination is creating a very difficult  
24                  situation for us.

25                  THE COURT: Let me ask Mr. Baker. Mr.

1 MacLean has essentially said your witness is a liar, he  
2 was hired in federal court and he wants to know whether  
3 you admit that or deny it.

4 MR. BAKER: Your Honor, I don't have any  
5 problem answering that. The problem is the way they have  
6 directed specific things to myself and to Dr. Martell on  
7 the procedures that are directed only to parties.

8 I have no problems answering that myself.

9 The second problem is that they are asking  
10 me also to comment on things I have no way of knowing. I  
11 don't know what happened -- they have an affidavit that  
12 apparently says Dr. Martell lied and Dr. Martell says he  
13 didn't lie. I can't investigate that.

14 THE COURT: In terms of documents from  
15 you, you don't have them? That is the custody and  
16 control --

17 MR. BAKER: That is why I filed the  
18 objection. They asked me to basically obtain any  
19 documents that are relevant to that. I don't have  
20 documents relative to that.

21 They are asking me to provide things and  
22 conduct an investigation of something that I am not  
23 really capable of doing.

24 THE COURT: They are asking first of all  
25 whether he denies it. On the request for admissions,

1       didn't the order state -- I think the request for  
2       production and interrogatories --

3                       MR. BAKER: I thought those things --

4                       MR. MACLEAN: I am not sure how --  
5       certainly my understanding at the hearing, because the  
6       entire requests were attached to the motion. It was my  
7       understanding they were to respond to them.

8                       THE COURT: Entered a written order to  
9       avoid this problem. I just need to see what it says.

10                      Let me approach it this way. This witness  
11       has been accused of not telling the truth in a federal  
12       court. Obviously that goes to credibility.

13                      The petitioner wants to know whether that  
14       is correct or not. They want to know if that is not  
15       correct why they are mistaken.

16                      What is wrong with that line of inquiry in  
17       terms of a line of inquiry?

18                      MR. BAKER: No problem.

19                      THE COURT: You're not objecting to the  
20       questions?

21                      MR. BAKER: No.

22                      THE COURT: All right. I don't have the  
23       complete document in front of me. I have your memorandum  
24       and you say -- I granted the motion. I am sorry. My  
25       memory was mistaken. Document 145. Here is what -- the

1 follow-up to that is if your witness is going to come to  
2 court and say and pull out his briefcase all this is a  
3 lie because of these things, then I think Mr. MacLean and  
4 Mr. Redick are entitled to know what those things are  
5 they are going to pop out of his briefcase. I suspect  
6 that is why they want documents regarding the denial.

7 MR. BAKER: To my knowledge he has no  
8 intention of doing that.

9 THE COURT: He is going to deny this?

10 MR. BAKER: He will deny the allegation, I  
11 am sure. But as far as proceed producing proof in  
12 support of his case or against his case or whatever, I  
13 don't believe he intends to bring anything like that.

14 THE COURT: Well, somebody hand me the  
15 discovery request so I can look at each question.

16 MR. MACLEAN: Your Honor, I want to make  
17 one comment about the discovery request. I don't think  
18 they are overly broad. That is the one issue raised.

19 I want to point out to the Court that  
20 number one, this motion did not comply with the local  
21 rules that requires counsel to certify when they file  
22 discovery motions to say they have tried to consult with  
23 the other side in a good faith effort to resolve the  
24 dispute. They didn't certify it to that. That is  
25 because they never did.



1           We never received any communication from  
2           the state about the scope of our discovery request.

3           I have always been willing to talk to them  
4           about the scope of our request. We are after some  
5           information. We are always asked for a lot of  
6           information and we would like to narrow it down.

7           We don't want to spend a lot of time  
8           looking at needless information.

9           Their motion doesn't comply with the local  
10          rule that requires that certification.

11          THE COURT: What about that, Mr. Baker?

12          MR. BAKER: I did not consult with him in  
13          response to this. Perhaps I should have. I believe they  
14          would have still have requested me to respond as they had  
15          requested absent the Court saying differently.

16          THE COURT: Well, I give everyone a bite  
17          at the apple. You just had yours.

18          Let's look at the request for admission.  
19          This is admit or deny all factual statements, and always  
20          contains the affidavits are true and correct. Any  
21          problem in answering that one?

22          MR. BAKER: No, as long as it is directed  
23          at parties. I speak for the party. Dr. Martell denies  
24          any inappropriate conduct or any lying.

25          But answers are directed to parties. I am

1       responding. I have no problem responding to that as long  
2       as it is directed to me.

3                   THE COURT: Now, how about number two?  
4       Can you answer that one?

5                   MR. BAKER: Is this -- yes, sir, Your  
6       Honor. The same thing we have gone into.

7                   THE COURT: On the interrogatories?

8                   MR. BAKER: With regard to these  
9       interrogatories, I feel are asking overly broad  
10      questions. Please provide a full explanation and  
11      witnesses that support your position.

12                   I don't know that. I can give him the  
13      basis of my -- why I have that opinion. That is simple.  
14      Dr. Martell -- you know, from my understanding this is  
15      something occurring in New Mexico. I don't know what all  
16      the evidence is out there, or witnesses for that matter.

17                   THE COURT: Are you taking the position  
18      you don't have to answer interrogatories about your  
19      witnesses?

20                   MR. BAKER: Pardon me?

21                   THE COURT: Are you taking the position  
22      you don't have to answer interrogatories about your  
23      witnesses?

24                   MR. BAKER: No, Your Honor. I am saying I  
25      can't provide the Court with all --

1 THE COURT: Mr. MacLean, why didn't you  
2 take that man's deposition.

3 MR. MACLEAN: We asked to, Your Honor.  
4 Mr. Baker said we don't want to produce him for a  
5 deposition until he completed his report. That is going  
6 to be late.

7 I asked Mr. Baker, I would like to take  
8 his deposition just about his background. We don't need  
9 to get into the record. Mr. Baker said, no, I prefer not  
10 to until his report is finished.

11 MR. BAKER: The reason his report is not  
12 prepared, we were still getting stuff from the expert,  
13 which has been coming in for the past couple weeks.

14 This is complex and a large amount of  
15 documents to review. That is why the report is not done.

16 MR. MACLEAN: The point is, I conceded  
17 that point. I explained to Mr. Baker that, fine, we will  
18 not take his deposition on his report or his papers but  
19 we would like to take his deposition on his background.  
20 We have other questions we would ask about, items on his  
21 resume, et cetera.

22 But Mr. Baker said, no.

23 Now, we have not had any discussion since  
24 the motion was granted, Your Honor. That came before the  
25 motion was granted. But since the motion was granted, we

1 expected to get answers. And if this is the position  
2 that respondent is taking, that they don't have knowledge  
3 and they can't respond, they didn't have to wait until  
4 4:30 yesterday afternoon to file the response. They  
5 could have responded that way at the hearing.

6 MR. BAKER: At the hearing I was still  
7 reading the motion. As the Court knows, we have been  
8 involved in a number of things in this court in the past  
9 week and yesterday was as soon as I could get or  
10 completely analyze the situation.

11 THE COURT: I am going to -- you need to  
12 answer these as far as what is in your possession,  
13 custody and control and what you are aware of.

14 MR. BAKER: We can do that, Your Honor.

15 THE COURT: You need to do that as soon as  
16 possible. You need to serve these answers to Mr. MacLean  
17 and Mr. Redick before Mr. Martell is called to the  
18 witness stand.

19 Now, the other thing is you need to talk  
20 to your witness about this. If he is going to produce  
21 any documents denying these allegations, I am going to  
22 exclude those documents unless the you give them to Mr.  
23 MacLean.

24 MR. BAKER: Yes, sir, we will definitely  
25 do that.

1 THE COURT: I don't want documents popping  
2 up where he pulls out a letter that says I have been  
3 investigated and these were found to be unfounded and  
4 this is why I am relying on it. I don't know that there  
5 is such a thing.

6 And then you have to produce whatever is  
7 in your possession, custody and control and answer these  
8 questions.

9 If anything is going to pop up that  
10 supports the denial, Mr. MacLean and Mr. Redick, you need  
11 to see it in advance.

12 MR. BAKER: No problem.

13 THE COURT: Does that solve your  
14 problem?

15 MR. MACLEAN: Your Honor, I think under  
16 the circumstances that may be the best we can expect.

17 It doesn't solve our problem. We wanted  
18 to find information that we could use to test credibility  
19 on the denial. We are not going to get that, it appears.

20 THE COURT: We will swear him and then ask  
21 him that.

22 MR. MACLEAN: That is what we intend to  
23 do.

24 THE COURT: I will let you ask him. I  
25 will let you ask him and have him respond. And then if

1       there are any surprises, I will take up the question  
2       understanding that if you need time or no time to track  
3       some of these documents down. I will give you that  
4       latitude.

5                       I think that is the best way to deal with  
6       it rather than take another deposition and another last  
7       minute discovery dispute.

8                       Mr. Baker is going to the answer those.  
9       He is going to produce anything responsive in his  
10      possession, custody or control and direct his witness in  
11      regard to any documents that he is going to use to  
12      support or deny the allegation against him. Then those  
13      documents need to be given to Mr. MacLean.

14                      We will see where we go from there. I  
15      think that is the way to handle that.

16                      Anything else we need to take up before  
17      Monday?

18                      MR. MACLEAN: No, Your Honor.

19                      THE COURT: Who do we anticipate first  
20      thing Monday.

21                      MR. MACLEAN: We will start with either  
22      one of three persons, Lionel Barrett, Sumter Camp or Neal  
23      McAlpin. Probably it will be Lionel Barrett.

24                      MR. REDICK: We would like to present them  
25      in chronological order. I am afraid Mr. McAlpin can't be

1 Monday. It will be mid week. I think Mr. Camp and Mr.  
2 Barrett will testify Monday.

3 THE COURT: All right. I have it clearly  
4 in my head about sequence of lawyers. I will be able to  
5 keep that straight.

6 Did I hand back the discovery? It is kind  
7 of hard for you to answer that if you don't have it.

8 MR. BAKER: I have another a copy.

9 THE COURT: I will take a brief break and  
10 we will take up another matter.

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